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BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

IN THE MATTER OF:

Gary Development Co., Inc.)

Respondent)

) Docket #RCRA-V-W-86-R-45

) *****

) | VOLUME II |

) *****

BE IT REMEMBERED that heretofore, pursuant to agreement as to time and place and pursuant to Federal guidelines, the above-referenced cause came on for Trial before the HONORABLE J. F. GREENE, Administrator, U. S. Environmental Protection Agency, and reported by Vivian E. Jarrett, CSR, RPR-CP, a duly competent and qualified court reporter and Notary Public in the County of Lake, State of Indiana, on the 10th day of September, 1987, commencing at the hour of 9:00 a.m.

| VOLUME II |

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Respondent)
_____)

I N D E X

VOLUME II

COMPLAINANT'S
WITNESS

D

C

RD

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VD

(September 10, 1987)

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RESPONDENT'S
WITNESS

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Gary Development Co., Inc.) Docket #RCRA-V-W-86-R-45
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E X H I B I T S

VOLUME II

EXHIBIT	STATUS	PAGE
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NOTES

A P P E A R A N C E S :

HONORABLE J. F. GREENE
Administrative Law Judge

Presiding Judge;

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ATTORNEY ROGER M. GRIMES
U.S. Environmental Protection Agency
Region V
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Chicago, Illinois 60604

on behalf of U.S. EPA;

ATTORNEY WARREN D. KREBS
PARR, RICHEY, OBREMSKEY & MORTON
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Indianapolis, Indiana 46204

on behalf of Gary Development Co.

* * * * *

THE COURT: If you gentlemen are
ready, we'll get started. Mr. Cooper, back to
the stand, please. (Witness seated.)

Mr. Cooper, you'll remember that you're
under oath. Continue, Mr. Radell.

D I R E C T E X A M I N A T I O N

BY MR. RADELL

Q. Mr. Cooper, just to refresh your mind
as to where we sort of left off yesterday, you
had testified basically about the Part A Permit
Application, the lack of a submittal of a Part

1 B or certification for groundwater monitoring
2 and financial assurance; and today we will be
3 moving into your testimony concerning the
4 actual presence of hazardous waste at the
5 facility.

6 Mr. Cooper, in your review of the Part A,
7 you identified, amongst some of the hazardous
8 waste in the permit application, hazardous
9 waste Number K087. Is that a listed hazardous
10 waste under RCRA?

11 A. Yes, it is.

12 Q. Okay. And is it similarly listed in
13 the Indiana regulations?

14 A. Yes.

15 Q. All right. Why is it listed? Does
16 the -- is there any characteristic given, a
17 reason for the listing?

18 A. It's listed for hazardous waste
19 constituents and two, Naphthalene and Phenol.

20 Q. So, that's for -- what it's listed in
21 for its toxicity?

22 A. Yes.

23 Q. All right. Do you -- in your duties
24 in the RCRA Enforcement Section, do you gather

1 information, routinely, concerning facilities?

2 A. Yes.

3 Q. What are some of the ways that you
4 gather this information?

5 A. Under RCRA Section 3007, information
6 can be gathered directly from the generators,
7 transporters or treatment, storage and disposal
8 facilities, simply by requesting that informa-
9 tion from them.

10 Q. Okay. Did you make any such
11 information request regarding Hazardous Waste
12 KO87?

13 A. Yes, I did.

14 Q. To whom did you send such a request?

15 A. I sent a letter from our RCRA
16 Enforcement Section to LTV Steel, formally
17 known as J & L Steel.

18 Q. Did you receive any information back?

19 A. Yes, I did.

20 Q. All right. I am showing the witness
21 a document which I have identified as
22 Complainant's Exhibit Number 20. (Tendered).

23 Is this the response to the information
24 request which you sent out, pursuant to your

1 investigative authorities?

2 A. Yes, it is.

3 Q. Could you briefly describe -- just
4 describe or identify the document, like to say
5 who signed it and who it's from?

6 A. Who signed it, by Lee Larson, counsel
7 for LTV Steel; and its addressed to U.S.
8 Environmental Protection Agency, to my
9 attention, because I had requested it in
10 writing and sent them a letter that it be sent
11 to me.

12 MR. RADELL:

13 Q. I would move to introduce this into
14 evidence.

15 THE COURT: Mr. Krebs.

16 MR. KREBS: I have a few
17 questions for the purpose of perhaps
18 making an objection, Your Honor.

19 V O I R D I R E E X A M I N A T I O N

20 BY MR. KREBS

21 Q. Mr. Cooper, you're saying that you
22 sent a letter to Mr. Larson, and Mr. Larson
23 responded by this letter; is that basically
24 correct?

1 A. I sent a letter to LTV Steel.

2 Q. And you got back -- okay, he refers
3 to, he says the letter of Mr. -- how do you
4 pronounce that?

5 A. Constantelos.

6 Q. Constantelos. That was your letter,
7 basically?

8 A. Yes.

9 Q. Signed by Mr. Constantelos?

10 A. That's correct.

11 Q. He responded to that letter, is that
12 what you're saying?

13 A. That's correct.

14 Q. And this is what you got back.

15 MR. KREBS: Could I have a
16 moment to speak with counsel, please?

17 (Conferring with Mr. Radell)

18 MR. KREBS:

19 Q. Mr. Cooper, as to the documents that
20 came with the letter, you're saying these were
21 all attached to this letter or were enclosed
22 with the letter?

23 A. Yes, they were.

24 Q. And would that include the first --

1 or the first page after the letter, the
2 document that has a list with dates?

3 A. Yes.

4 Q. And would that include the drawing,
5 also?

6 A. Yes.

7 Q. Okay. And then these documents which
8 say they are manifests?

9 A. That's correct.

10 Q. Other than getting these back or
11 getting these from J & L, do you have any
12 personal knowledge with any of these documents,
13 as far as the individuals whose signatures
14 appear here, as to who they are or any of their
15 representation?

16 A. Excuse me, all I know is what is on
17 the documents themselves; so I'm not familiar
18 with these individuals.

19 MR. KREBS: Your Honor, we would
20 object to the document, on the
21 grounds that it contains hearsay, the
22 fact that it would be, again, double
23 hearsay.

24 The witness got a letter from

1 individuals who are not here
2 testifying, and he is sponsoring into
3 evidence the documents which they
4 sent him. And from the face of the
5 document, what they sent him are
6 records that are hearsay, even as to
7 the individuals who sent it to him.
8 So we have a double hearsay problem
9 here, where we have -- we do not have
10 present here, trying to put this
11 document in, any of the individuals
12 who allegedly signed these manifest
13 forms.

14 Secondly, we did not have the
15 individual who sent these manifest
16 forms to Mr. Cooper; and instead, we
17 have Mr. Cooper merely trying to put
18 in documents that someone evidently
19 allegedly discovered, that they sent
20 to him. So there's a total lack of
21 trustworthiness in these documents.

22 Even under the exception to the
23 hearsay rule, under the rules of
24 evidence, even under the exception of

1 allowing business records, there's,
2 very specifically, what's required to
3 get documents in as business records.
4 It has to be shown that the documents
5 were kept in the regular course of
6 business, by individuals who have
7 that responsibility; the documents
8 have to be authenticated by those
9 individuals or certified by those
10 individuals, the keeper of the
11 records, if you will. They just
12 can't say here are these documents
13 from somebody's records and we think
14 they are correct.

15 These are merely photostatic
16 copies. They are not even the
17 originals, from the face of it -- at
18 least mine are certainly not the
19 original manifests -- so we don't
20 know what the originals are. We
21 don't have the originals here in
22 court. If we do, that's fine and
23 maybe it will correct part of the
24 objection. But there's been no

1 showing they are authentic
2 duplications of documents that are
3 business records. There's absolutely
4 nobody testifying. Even if they
5 would come under the exception to the
6 business record, the business record
7 exception hearsay rule, there's no
8 testimony to support such an
9 exception at this time on this
10 document, absolutely nothing.

11 THE COURT: Well, I think
12 everything you said is an accurate
13 statement of the Federal Rules of
14 Evidence, for which many will argue
15 there is good reason to be. In this
16 proceeding, we're governed by the EPA
17 rules, which are not equivalent to
18 Federal Rules.

19 I'm going to admit the document,
20 but I share some of your concerns
21 about them. Moreover, a many number
22 of these documents are cut off at the
23 bottom; and on quite a few of the
24 pages, there's half of the signa-

1 ture -- the page I'm looking at, all
2 of the signature at the bottom, the
3 bottom of the manifest page, the
4 dates and other material has been cut
5 off in the duplication. So, I'll
6 admit it, Mr. Radell; but, once
7 again, whoever duplicates material in
8 preparation for litigation could use
9 some instruction.

10 MR. RADELL: In this case, Your
11 Honor, we only have the authority
12 under the statute to request copies
13 of documents. We do not have the
14 authority to request originals. So
15 this is the state in which we
16 received these copies.

17 THE COURT: Oh, I see. This has
18 not been copied by someone in the
19 Agency; this is the copy of a copy?

20 MR. RADELL: Right.

21 MR. KREBS: That's, I guess,
22 what my objection is, Your Honor. I
23 mean, it's worse than hearsay. I
24 mean, it's just copies of copies from

1 people that aren't here.

2 MR. RADELL: Even the Federal
3 Rules of Evidence provide that
4 photocopies may be submitted in lieu
5 of the originals, unless there's some
6 question --

7 MR. KREBS: If they are
8 certified.

9 THE COURT: Just a minute. It's
10 not a question so much of the photo-
11 copy, I suppose. This is a
12 sponsoring witness -- and many of
13 them might not be -- but under our
14 rules, I'm going to have to admit it.

15 MR. KREBS: Thank you, Judge.

16 MR. RADELL: Mr. Cooper --

17 THE COURT: Just a moment,
18 Number 20 will be admitted for the
19 Complainant.

20 (Complainant's Exhibit No. 20 is Admitted)

21 D I R E C T E X A M I N A T I O N

22 BY MR. RADELL

23 Q. Mr. Cooper, could you describe the
24 manifests that are attached to this information

1 request; could you namely describe to which
2 hazardous waste they apply?

3 A. They all specifically apply to K087,
4 tank tar sludge, decanter tank tar sludge.

5 Q. And these manifests track the waste
6 generated by whom?

7 A. Jones and Laughlin Steel.

8 Q. And do they indicate where these --
9 or who transported these wastes?

10 A. Yes, they do, Industrial Disposal
11 Corporation.

12 Q. And where do these manifests indicate
13 that Industrial Disposal Corporation took these
14 wastes?

15 MR. KREBS: Objection, Your
16 Honor, the document speaks for
17 itself. The witness just will be
18 testifying, based upon documents that
19 are hearsay.

20 THE COURT: I don't know if
21 that's true, if that's clear what
22 he's doing; so I'll allow it.

23 MR. RADELL: Allow the
24 objection?

1 THE COURT: I will allow the
2 question to be answered.

3 MR. RADELL:

4 Q. Could you please answer that
5 question.

6 A. The hazardous waste manifests
7 indicate that the treatment, storage and
8 disposal facility to eliminate is the K087
9 waste, to be disposed of or who would accept
10 these wastes is Gary Development, Gary Land
11 Development, specifically.

12 Q. Did both the generator and the
13 transporter certify that this is where these
14 wastes were being taken?

15 A. Yes, they did.

16 Q. Okay. Referring to the first
17 attachment, that sort of chart that says tar
18 decanter sludge, you testified that this came
19 in with the information request. Could you
20 explain what that is?

21 A. This was a summary, sort of an adding
22 up of all of the decanter tar sludge that was
23 sent by LTV Steel or J & L Steel to Gary
24 Development on specific dates and months.

1 Q. So we're to understand that, based
2 upon this, there were 18 million gallons of tar
3 decanter sludge taken to Gary Development
4 Company in 1980; 222 million gallons in 1981;
5 and 33 million gallons in 1982?

6 A. Yes, those are the totals that LTV
7 had sent to us.

8 THE COURT:

9 Q. Mr. Cooper, did you add these up
10 yourself or to check these figures; or, at
11 least, are you inferring from what's on page
12 two of this document, that that's what it
13 stands for and that those numbers are a correct
14 summary of something, presumably the attached
15 documents, although that isn't there?

16 A. I don't know that I checked these
17 specific numbers. I did on all other manifest
18 we received, as well as written a memo to the
19 file, describing the amounts of each waste, I
20 would say that I probably did check these. I
21 don't recall whether I used these figures for
22 sure or not.

23 MR. RADELL:

24 Q. He has testified that he wrote this

1 in a memo; so, apparently, you're unable to
2 recall, without looking at the memo, whether in
3 fact you did?

4 A. That's correct.

5 MR. RADELL: Okay. I would like
6 to show this to him, not for the
7 purpose of introducing it into
8 evidence, but just to refresh his
9 recollection.

10 MR. KREBS: Your Honor, if we're
11 not going to introduce the letter in,
12 I'm going to object to the Judge
13 reading a document that's not going
14 to even be admitted into evidence.

15 THE COURT: Mr. Krebs, Mr.
16 Krebs, I'm not a jury, as you can
17 clearly see. I assure you -- in the
18 first place, I haven't read it. In
19 the second place, if I did, I would
20 not be influenced by it.

21 MR. KREBS: I'm sorry, I didn't
22 here what you were saying?

23 THE COURT: I said I haven't
24 read it, I can't see it from here;

1 and if I were going to read it, I
2 would not be influenced by it. I
3 think we can sort these things out,
4 what's in the record and what isn't.

5 MR. RADELL:

6 Q. Could you, Mr. Cooper, tell us what
7 figures you added up for 1981, concerning LTV's
8 shipments of K087 to Gary Development Company
9 for that year?

10 MR. KREBS: Again, I'm gonna
11 object to the question, just on the
12 basis that I think the witness needs
13 to, in responding to the question, he
14 needs to indicate based upon what.
15 The question is what figures did he
16 add up. I just think it's an
17 improper question the way it's
18 phrased.

19 THE COURT: Yes. Mr. Radell,
20 let's make some determination here as
21 to where the figures came from that
22 were added up.

23 MR. RADELL:

24 Q. Mr. Cooper, where did the figures

1 come from that were added up?

2 A. I reviewed the manifests; I took the
3 number of gallons for each year, totaled them
4 up for the three years; and for purposes of
5 this memo, I converted those to pounds, from
6 gallons to pounds; coming up with a total of
7 3,208,500 pounds.

8 Q. Okay. Thank you.

9 THE COURT:

10 Q. Are you saying that you added up the
11 figures on the manifests that are attached to
12 the exhibit?

13 A. That's correct.

14 MR. RADELL:

15 Q. For the year 1981?

16 A. That's just referring to that one
17 year, evidently. I can't say why I did that
18 for the one year; but that was the year that
19 had the most and it was a total year, the
20 others were partial years.

21 Q. Mr. Cooper, in the course of main-
22 taining your files for this case, have you ever
23 seen any generator annual reports regarding the
24 generation of K087 from -- at Jones and

1 Laughlin Steel?

2 A. Yes, I have.

3 Q. Would you recall what year that was
4 for?

5 A. For the year ending 1981, December
6 31st, 1981.

7 Q. I am showing the witness an exhibit
8 that I have marked as Complainant's Exhibit
9 Number 26. (Tendered.)

10 Mr. Cooper, could you identify this
11 document for the record.

12 A. Yes. This is a record of hazardous
13 waste generated by J & L Steel. It's called a
14 generator annual report for the year ending
15 December 31st, '81.

16 Q. Who signed this report?

17 A. It appears to be Carl Broman.

18 Q. And what is the date that he signed
19 it?

20 A. February 22nd, 1982.

21 MR. RADELL: At this point I
22 would move to introduce this into
23 evidence.

24 THE COURT: Mr. Krebs.

V O I R D I R E E X A M I N A T I O N

BY MR. KREBS

Q. Mr. Cooper, the document which you have in front of you marked as Group Exhibit 26, did you personally photocopy that document from the original?

A. Excuse me, this was sent to us or --

Q. Just answer my question. Did you personally photocopy that document?

A. No, I did not.

Q. Have you personally seen the original of that document?

A. No.

Q. Do you personally know the individual that allegedly photocopied this document from the original, from your personal knowledge, and can you tell me that person's name?

A. I can't say for sure, no.

MR. KREBS: I will object to the admission of this document. It's totally unauthenticated. There's absolutely no certification on this that this is a correct and accurate copy of a public record of the State

1 of Indiana. The original has not
2 been produced in this courtroom, and
3 this witness has not testified as to
4 any personal knowledge that he has,
5 whatsoever, regarding how this copy
6 came into being. He would have no
7 abilities to know whether it's
8 accurate or not, having not been
9 present and not even knowing who made
10 the copy; and he's not testified that
11 he has any personal knowledge
12 regarding this document, as to the
13 facts allegedly stated therein. And
14 the document is being offered,
15 evidently, for the proof of the
16 matters contained in them.

17 THE COURT: Is that the purpose
18 of the offer?

19 MR. RADELL: Yes, it is.

20 THE COURT: And, once again,
21 there are portions of it along the
22 edge that is cut off, Mr. Radell.
23 There's something at the bottom that
24 is missing; and along the edge, a

1 tiny bit appears to have been cut
2 off, but not to the extent that we
3 can't read it. But it will be
4 preferable for the entire document to
5 be present.

6 I'm going to admit it, but I
7 wish some more attention could be
8 paid to the quality of these
9 documents. Continue.

10 (Complainant's Exhibit No. 26 is Admitted)

11 D I R E C T E X A M I N A T I O N

12 BY MR. RADELL

13 Q. Mr. Cooper, what -- could you
14 summarize what this document describes happened
15 to Hazardous Waste Number K087.

16 MR. KREBS: Objection, Your
17 Honor, the document speaks for
18 itself. Secondly, the witness is
19 testifying to no more than to
20 hearsay, on a document which he has
21 never personally reviewed the
22 original of.

23 THE COURT: Yes, it's clear he's
24 reading from the document; but I will

1 allow that.

2 MR. RADELL:

3 Q. Could you please answer that
4 question.

5 A. This document indicates that during
6 the year of 1981, J & L Steel disposed of
7 decanter -- tar decanter sludge, Hazardous
8 Waste K087, in the amounts of 3,203,500 pounds.
9 And on seeing this document, if I might, with
10 my memory refreshed, I believe that is the same
11 number which I referred to in the memo. So,
12 evidently, I did not use a conversion from
13 gallons to pounds; that's the reason we only
14 have that one annual report figure in this
15 document, as well as the memo that I wrote.

16 Q. Where does this document identify
17 that this waste was disposed of?

18 A. Gary Land Development.

19 Q. Okay. Is this generator's annual
20 report a document that is routinely -- that is
21 required of generators and routinely kept by
22 the State of Indiana?

23 A. Yes, it is.

24 Q. Okay. Earlier -- well, yesterday,

1 actually, you heard me stipulate that the
2 United States was stipulating to the withdrawal
3 of all allegations concerning Hazardous Waste
4 Number F006, on the basis of delisting
5 petition. Are you aware of -- well, did that
6 delisting petition cover any other wastes
7 generated from Jones and Laughlin, other than
8 the F006?

9 A. The Delisting Petition 116 applied
10 only to F006 waste from Jones and Laughlin.

11 Q. Have you seen any evidence to that
12 effect? What do you base that statement on?

13 A. I base that on two things; first of
14 all, with the delisting petition itself;
15 secondly, conversations with people in head-
16 quarters that I have talked to many times about
17 the list of petitions, and they told me that,
18 specifically --

19 MR. KREBS: Objection, Your
20 Honor, as to what someone told him,
21 whoever this someone is. The main
22 thing is, can he identify who this
23 person is? The person, they are
24 maybe not here. It's not only

1 hearsay, but the person who has made
2 these statements has not even been
3 identified.

4 THE COURT: Mr. Radell.

5 MR. RADELL: What I would say at
6 this point, that Mr. Cooper stated
7 that he contacted EPA headquarters,
8 as part of his routine investigation
9 of waste being delisted or not
10 delisted; and that that is just part
11 of his regular duties and part of his
12 inspection authority under RCRA.

13 I would also say that at this
14 time I'm not -- I'm not offering,
15 currently, that for the truth of the
16 matter asserted about the K087. I
17 was using it as a foundation for
18 introduction of the document.

19 THE COURT: Very well.

20 Continue.

21 D I R E C T E X A M I N A T I O N

22 BY MR. RADELL

23 Q. I'm showing the witness a document
24 which I have marked as Complainant's Exhibit

1 Number 21. (Tendered).

2 Mr. Cooper, have you ever seen this
3 document before?

4 A. Yes, I have.

5 Q. Could you please identify it.

6 A. This is a copy of a letter dated One,
7 December, 1981; sent by Kenneth Fenner, Chief
8 of the Water and Hazardous Material Enforcement
9 Branch of EPA; to Mr. George Smith of Jones and
10 Laughlin Steel.

11 Q. Is this a letter which you keep in
12 the regular course of your duties, regarding
13 enforcement of this administrative complaint?

14 A. Yes, it is part of the file record.

15 MR. RADELL: I would move to
16 introduce this into evidence.

17 THE COURT: Mr. Krebs.

18 MR. KREBS: Could you repeat the
19 last question? I'm sorry, I was
20 reading mine. I may not have any
21 objection. What was your last
22 question?

23 MR. RADELL: I asked him if it
24 was a document that he routinely

1 keeps in his files for the purposes
2 pertaining to his duties with RCRA.

3 MR. KREBS: Thank you. I
4 apologize for that. I had one or two
5 questions I'd like to ask. I may not
6 have an objection, but if I may
7 clarify this.

8 V O I R D I R E E X A M I N A T I O N

9 BY MR. KREBS

10 Q. Mr. Cooper, the document I have,
11 which is obviously a photocopy, says on the
12 bottom "Petitioner's Number 30". Do you know
13 what that means?

14 A. I don't.

15 Q. Was this document used by EPA on some
16 other occasion?

17 A. I don't know.

18 Q. Is this how the document appears in
19 the files of EPA?

20 A. Yes.

21 Q. Why on this document is there a
22 letterhead of U.S. EPA at the top, whereas on
23 prior documents that have been admitted over
24 objection of EPA documents in their files,

1 there was no letterhead?

2 A. I suspect that this is a copy of the
3 letter sent to David Lamm at the Indiana
4 Department of Environmental Management or the
5 Indiana State Board of Health in this case.

6 Q. So this document is not marked
7 received by the State of Indiana any place?

8 A. No, it is not.

9 Q. So you're just surmising that that's
10 where it may have came from?

11 A. That's correct.

12 MR. KREBS: We'll object to the
13 document, based upon hearsay and lack
14 of authentication.

15 THE COURT: Well, as you know,
16 Mr. Krebs, those are not under our
17 rules of procedure on objections that
18 I have to take into account; so I'm
19 going to admit it. Looks like it
20 came from somebody's notebook, too,
21 from the three holes in this left
22 margin.

23 THE WITNESS: It's possible, if
24 I might add, that it didn't come from

1 the State Board of Health; because
2 it's not stamped with their receipt.
3 It's possible that this was submitted
4 to us by J & L Steel. I don't know
5 the origin of this.

6 MR. KREBS: If it was submitted
7 to you by J & L Steel, why would it
8 be marked Petitioner's 30 at the
9 bottom?

10 THE WITNESS: I don't know.

11 THE COURT: In any case, Number
12 21 is submitted.

13 MR. RADELL: Thank you.

14 THE COURT: Continue,

15 Mr. Radell.

16 (Complainant's Exhibit No. 21 is Admitted)

17 D I R E C T E X A M I N A T I O N

18 BY MR. RADELL

19 Q. Is this letter basically a summary of
20 the delisting petition that was granted for
21 F006, as it applies to Jones and Laughlin
22 Steel?

23 A. Would you repeat that?

24 Q. Well, could you explain what this

1 letter is?

2 A. It refers to delisting determination
3 as to be made for a particular waste; and it
4 describes that particular waste, EPA Hazardous
5 Waste Number F006, specifically defined as
6 waste water treatment sludges from
7 electroplating operations.

8 Q. Does this document -- does the
9 delist -- does this letter indicate whether or
10 not the delisting applied to any other waste,
11 other than the F006?

12 A. It indicates that is the only waste
13 that is being referred to in the delisting
14 petition.

15 Q. This document does not indicate that
16 the delisting petition that was granted applies
17 to Hazardous Waste Number K087?

18 A. No.

19 Q. Thank you. To the best of your
20 knowledge -- or has K087 ever been delisted for
21 the Jones and Laughlin facility?

22 A. It has not.

23 Q. Have you made inquiries as to that
24 regard?

1 A. Yes, I have.

2 Q. Okay. When EPA lists a waste as a
3 hazardous waste, does it justify that somehow?
4 Does it give the reasons for listing it and
5 document them?

6 A. Yes. There are background documents
7 for all hazardous waste that have been listed
8 as hazardous waste through the EPA regulations.

9 Q. Are these background documents
10 incorporated into the Federal regulations in
11 any way or referred to?

12 A. Yes.

13 Q. I'm showing the witness a document
14 which I have labeled as Complainant's Exhibit
15 Number 19. (Tendered.)

16 Mr. Cooper, is this the background
17 document for K087?

18 A. Yes, it is.

19 Q. Have you reviewed this document?

20 A. Yes, I have.

21 Q. Based upon your review of this
22 document, could you briefly summarize, without
23 going through, you know, two or three hundred
24 pages, the -- oh, I'm sorry.

1 MR. RADELL: I would like to
2 move to introduce this into evidence.

3 THE COURT: Mr. Krebs.

4 MR. KREBS: Did he move to
5 introduce it?

6 THE COURT: Yes, just now.

7 MR. KREBS: I would like to have
8 just a moment.

9 V O I R D I R E E X A M I N A T I O N

10 BY MR. KREBS

11 Q. I suppose I'm just a little bit
12 unclear on this. Mr. Cooper, where did you say
13 you received this document from?

14 A. This is an EPA document.

15 Q. I realize that, but how?

16 A. It's kept on file on the 12th floor
17 of our building that I'm employed in.

18 Q. In Chicago?

19 A. Yes, sir.

20 MR. RADELL: I believe he
21 testified earlier that this was a
22 document prepared by EPA headquarters
23 to justify the listing of K087 as a
24 hazardous waste and that this

1 document is incorporated by reference
2 into the Federal Register.

3 MR. KREBS:

4 Q. Who prepared this document?

5 A. This document was prepared by EPA.
6 It involves a significant amount of scientific
7 research. It tells the models that we used,
8 that describes the assumptions that are made,
9 it incorporates public comment at each step of
10 the way and answers the questions prior to
11 listing each waste as hazardous.

12 Q. That I understand. But my question
13 is, who at EPA prepared and authored this
14 document?

15 A. I don't know.

16 Q. How many employees does U.S. EPA
17 have?

18 A. I have no idea.

19 Q. Thousands?

20 A. Yes.

21 Q. When you copied this document, did
22 you have the original when you reproduced this
23 or just a copy of a copy?

24 A. I don't know.

1 Q. So, you didn't -- I guess what you're
2 saying is, you probably didn't reproduce this
3 yourself?

4 A. I didn't.

5 MR. KREBS: Your Honor, we will
6 again object to this document. This
7 document is -- I don't know how many
8 pages it is, several hundred pages, I
9 think. I don't know who authored the
10 document. It contains, obviously,
11 numerous opinions with scientific
12 data; and we have no idea who among
13 the thousands of employees at EPA who
14 might have been responsible for
15 authoring this document. We don't
16 know who copied it. We don't know if
17 they left out pages, whether the
18 copies of these pages are accurate.
19 There's just no testimony at all to
20 support the admission of this
21 document.

22 THE COURT: Number 19 is
23 received. I think we have to discuss
24 it in terms of inches, approximately

1 two inches to Number 19. As far as
2 you know, Mr. Cooper, this is a
3 complete document?

4 THE WITNESS:

5 A. As far as I know, that's true.

6 (Complainant's Exhibit No. 19 is Admitted)

7 D I R E C T E X A M I N A T I O N

8 BY MR. RADELL

9 Q. Mr. Cooper, could you briefly
10 summarize the reasons that EPA listed K087 as a
11 hazardous waste?

12 MR. KREBS: For the record, I
13 would like to object, Your Honor;
14 because the witness has no knowledge
15 of this document, other than the
16 knowledge that we have, that here's a
17 copy of it; and he's going to testify
18 as to what this document says. We
19 don't even know who drafted the
20 document.

21 THE COURT: Is this question to
22 be based on the document, Mr. Radell,
23 or upon Mr. Cooper's own knowledge?

24 MR. RADELL: It is to be based

1 upon Mr. Cooper's review of the
2 document and his understanding of it,
3 as a geologist employed by the United
4 States Environmental Protection
5 Agency, expressly for this sort of
6 purpose.

7 THE COURT: You may answer,
8 Mr. Cooper.

9 THE WITNESS:

10 A. Toward the back of this long
11 document, there's a listing background document
12 for a specific source of this hazardous waste,
13 which is coking; and it summarizes the basis
14 for listing that this is a hazardous waste. It
15 states that the administrator, quote, has
16 determined that decanter tank tar sludge may
17 pose a present or potential hazard to human
18 health or the environment, when improperly
19 transported, treated, stored, disposed of or
20 otherwise managed, and therefore should be
21 subject to appropriate management requirements
22 under Subtitle C of RCRA.

23 The basis for listing it as a hazardous
24 waste are the two toxic constituents, listed

1 here as Phenol and Naphthalene. It states,
2 quotes, that Phenol is highly toxic and an
3 animal carcinogen; and Naphthalene is also
4 toxic and is a demonstrated neoplastic
5 substance in experiments done on laboratory
6 animals.

7 MR. RADELL:

8 Q. You stated earlier that EPA
9 background documents are based upon scientific
10 research. Is there any scientific research or
11 any studies cited in this document to support
12 the listing of this K087?

13 A. In general, low-level, long-term tests
14 are performed on laboratory animals for the
15 purposes of listing or leaving out certain
16 wastes for that designation of hazardous waste.

17 Q. Does this document refer to any such
18 studies done for a K087?

19 A. I'm sure it does. I can't point to
20 them at this point.

21 Q. Okay. Mr. Cooper, originally, I --
22 excuse me, awhile ago you -- yesterday you
23 mentioned that Hazardous Waste Number D008 also
24 appeared on the Part A application. Could you

1 -- and you stated that it was listed for the
2 characteristic of EP toxicity for lead. Did
3 EPA make any information requests, the same
4 kind which they did for the Jones and Laughlin
5 Company, regarding the D008 in this case?

6 A. If I may correct you on one point,
7 D008 is not specifically listed on the Part A.
8 It mentions -- the place next to that is left
9 blank; and next to that it states that the
10 waste, which is being referred to as calcium
11 sulphate, the material being supplied by an ID
12 number, which is identified as USS Lead.

13 Q. Did EPA ever make any information
14 request concerning the calcium sulphate sludge
15 from USS Lead?

16 A. Yes. EPA sent an information request
17 under Section 3007 of RCRA to USS Lead.

18 Q. Did we receive a response back?

19 A. Yes, we did.

20 Q. Did you receive that response?

21 A. Yes, I did.

22 Q. Have you reviewed that response?

23 A. Yes.

24 Q. I am showing the witness an exhibit

1 which I have marked as Complainant's Exhibit
2 Number 23. (Tendered).

3 Mr. Cooper, is this the information
4 response about which you just testified?

5 A. Yes, it is.

6 Q. Could you tell us, is it on -- well,
7 it's a copy. Is it on stationery of the USS
8 Lead Refinery Company?

9 A. Yes.

10 Q. And who signed that?

11 A. Mr. Liscum.

12 Q. Was that signature notarized?

13 A. Yes.

14 Q. And what is the date that it was
15 notarized?

16 A. 30th Day of September, 1986.

17 MR. RADELL: I move to admit
18 this document into evidence.

19 THE COURT: Mr. Krebs.

20 V O I R D I R E E X A M I N A T I O N

21 BY MR. KREBS

22 Q. Mr. Cooper, on the document you have
23 in front of you, marked as Exhibit Number 23,
24 you mentioned a notary. Can you read that

1 person's name, the Notary Public?

2 A. Shirley K. Kahn.

3 Q. Okay. Is that an original notary on
4 there, the signature by the notary, on your
5 copy; or is that a photocopy of a signature?

6 A. I'm sure that we have the original.

7 Q. Who's we?

8 A. The EPA file would have the original.

9 Q. Is that here in the courtroom today?

10 A. I believe it is, actually.

11 Q. Okay.

12 A. I'd have to check.

13 Q. Would you get that out?

14 THE COURT: It's here?

15 MR. RADELL: I'm not aware if
16 Mr. Cooper brought it with his
17 official case file.

18 THE WITNESS: I can look.

19 THE COURT: You may look.

20 Mr. Radell, again, these copies have
21 cut off part of the left margin.
22 Were these copies made by the Agency
23 or by someone else?

24 MR. RADELL: Well, the actual

1 copy in your hand was made by the
2 Agency. I'm not aware of the
3 condition of the copy that was
4 submitted to us by USS Lead. I'm not
5 aware of whether or not they were
6 submitted to us in this fashion or
7 not, but your point is well taken.
8 Mr. Cooper has here an original of
9 the copy, with the letter with the
10 Notary Public's original signature.
11 To whom should he show that?

12 THE COURT: Mr. Krebs would like
13 to see it.

14 Now, where is the original of
15 the rest of the document, in the
16 courtroom?

17 MR. RADELL: No, just the
18 original of the cover letter.

19 MR. KREBS:

20 Q. Mr. Cooper, I believe you've had a
21 chance to look at your files; is that correct?

22 A. Yes.

23 Q. Regarding this document?

24 A. Yes.

1 Q. And is it correct that you discovered
2 the original cover letter of this document?

3 A. Yes.

4 Q. Okay.

5 A. It's in the file.

6 Q. Does the cover letter in your
7 original file have anything else, other than
8 the cover letter itself?

9 A. The file at this time contains only
10 the cover letter itself.

11 Q. None of the manifest documents?

12 A. The copies of the manifests are at
13 EPA in another file.

14 Q. Okay. Regarding the manifest and any
15 signatures -- I guess what we would call photo-
16 copies of signatures on those manifestings --
17 do you personally know any of the individuals
18 whose names allegedly appear thereon?

19 A. No, I don't.

20 Q. On the first page of the manifest,
21 after the cover letter, in the second column,
22 second space, there is a name of a John
23 Valocek. Do you see that?

24 A. Yes.

1 Q. And does it appear on that document
2 to you that Mr. Valocek's name has been signed
3 by somebody else on the document; and after it,
4 there's a slash and some letters?

5 A. It appears that way. However, on
6 further documents, his name is signed.

7 Q. Well, go to the third page. Would
8 that appear there's a slash also, and his name
9 is just kind of printed or handwritten on
10 there?

11 A. Yes, it does.

12 Q. Would it appear to you that
13 Mr. Valocek -- have you looked at these
14 manifests, gone through them individually?

15 A. Yes, I have.

16 Q. Would it appear to you that this
17 signature has written in several different
18 handwritings on these documents?

19 A. Mr. Valocek has signed some of the
20 documents by himself; others are signed by,
21 evidently, somebody named Kern, I would assume.

22 Q. How do you know he personally signed
23 these documents?

24 MR. RADELL: I don't believe the

1 witness is competent to testify as to
2 the handwriting of Mr. Valocek.

3 THE COURT: Well, I think that's
4 the point Mr. Krebs is making.
5 Continue, Mr. Krebs.

6 MR. KREBS:

7 Q. My question is, how do you know he
8 personally signed these documents?

9 A. I assume he did, if it's not a slash
10 and another name attached.

11 Q. Okay. But as far as his personal
12 signature, would it be correct that you don't
13 know what his personal signature looks like?

14 A. That's correct.

15 MR. KREBS: Your Honor, we will
16 object to these documents, on the
17 basis of both authenticity and
18 hearsay.

19 On my review of the documents,
20 which has been brief, there are
21 signatures on here of the same
22 individual in several different
23 handwritings. If these documents are
24 being offered for the proof of the

1 matters contained therein, and they
2 appear on their face to not have a
3 consistent signature of the indivi-
4 dual who's allegedly making
5 representation of which dramatically
6 affects -- or may dramatically
7 affects my client. No one even knows
8 what this individual's signature is,
9 and it's apparent that the same
10 individual did not sign all of these
11 documents.

12 THE COURT: Well, I have an
13 objection --

14 MR. KREBS: On the face, there's
15 a total lack of trustworthiness of
16 the document on their face.

17 THE COURT: I have an objection
18 to these documents that I think takes
19 precedence somewhat over that one,
20 and that is the following.

21 Mr. Radell, if you'll look at
22 Number 2406, you will find that it's
23 cut off in the left-hand margin; and
24 indeed the number of gallons of

1 calcium sulphate shipped appears to
2 be 00; which is an indication that so
3 much has been cut off here, that we
4 don't know how many gallons have been
5 shipped. That is the state of
6 affairs, as reflected in a good many
7 of these documents. I'm looking at
8 four right now, Number 2208, Number
9 2404, Number 2203, Number 285, Number
10 282, Number 281, 280, 277. So many
11 of these are incomplete, and we don't
12 know how much has been shipped, even
13 if they were -- well, they are
14 incomplete. And until we have before
15 us a complete copy of these
16 documents, I'm not going to admit it
17 and I will not breach Mr. Krebs'
18 objection. Because until I can read
19 the whole thing, I don't think we
20 have to discuss that.

21 I sympathize and understand the
22 problems of getting documents copied
23 for trial, and it is something that
24 every trial lawyer lives with; but it

1 is also something that every trial
2 lawyer has to spend a lot of time to
3 be very careful about.

4 Now, this document will be
5 rejected for the present time.

6 MR. RADELL: Your Honor, I
7 believe that there are copies of the
8 document which do not have those
9 portions cut off, that I submitted at
10 the pre-hearing exchange; and I would
11 move to be able to submit one of
12 those copies as the exhibit, instead
13 of this.

14 THE COURT: Okay. Do you have
15 one of them right there?

16 MR. RADELL: Yes, I have it
17 right here. I can pull it out of
18 this binder. I also have provided
19 copies to Your Honor and to opposing
20 counsel.

21 THE COURT: I have a pre-hearing
22 exchange in a binder. I don't know
23 if Mr. Krebs has it. May I see that,
24 please.

1 MR. RADELL: (Tendered).

2 THE COURT: They do appear to be
3 better; but let's take a look at it
4 during the next recess or over the
5 lunch hour, to be sure that every
6 document here is complete, so that we
7 can read it; and we will discuss it
8 again. Check Mr. Krebs' copy; I will
9 check my copy.

10 MR. RADELL: May I allow the
11 witness to discuss the document
12 without introducing it into evidence,
13 and then introduce the document into
14 evidence at a later point?

15 THE COURT: Why don't we take
16 the next subject on your list and
17 return to this one.

18 MR. RADELL: There's other
19 testimony considering this hazardous
20 waste, but I will postpone that until
21 after I've had a chance to verify
22 these other documents.

23 D I R E C T E X A M I N A T I O N

24 BY MR. RADELL

1 Q. Concerning Hazardous Waste Number
2 F005, is that waste identified in the Part A?

3 A. Yes, it was.

4 Q. Is that a listed hazardous waste?

5 A. Yes, it is.

6 Q. Did EPA ever make an information
7 request to the generator of that waste?

8 A. Yes, the EPA did.

9 Q. Who was the generator of that waste?

10 A. American Chemical Services.

11 Q. Did we receive a response back from
12 that information request?

13 A. Yes, we did.

14 Q. I am providing the witness with a
15 copy of the document which I have identified as
16 Complainant's Exhibit Number 22. (Tendered).

17 MR. RADELL: I would like to
18 introduce this document into
19 evidence.

20 THE COURT: Mr. Krebs.

21 MR. KREBS: Well, I think we
22 need a foundation on this one.

23 MR. RADELL: The witness has
24 testified that it was received

1 pursuant to an information request
2 under the 3000 Section.

3 MR. KREBS: May I ask some
4 preliminary questions, Your Honor?

5 THE COURT: Yes.

6 V O I R D I R E E X A M I N A T I O N

7 BY MR. KREBS

8 Q. A similar question, Mr. Cooper. On
9 this document, would it be correct that you're
10 not personally familiar with the signatures on
11 the manifests that are attached here?

12 A. Yes.

13 Q. If you will turn to -- I'm just gonna
14 count, because I don't think the pages are
15 numbered from the cover letter -- the fifth
16 page.

17 A. Including the cover letter?

18 Q. Yeah, including the cover letter. At
19 the bottom of that page, where it says
20 certification and it says this is to certify
21 acceptance of the hazardous waste shipment, it
22 says, "Transporter's Signature," can you read
23 the name there?

24 A. No, I can't.

1 Q. To the left of that, where it says
2 generator's signature, can you read that name?

3 A. It's not clear.

4 Q. On your copy, can you read the day of
5 the month, next to generator's signature?

6 A. I can't say what it is.

7 Q. On the next page, at the bottom of
8 the page, where it says, "Generator's
9 Signature," on your copy does it appear that
10 the year has been written over?

11 A. It appears that way.

12 Q. It says 12/10, and something in the
13 digits has been written over on there?

14 A. Uh-huh, that's correct.

15 Q. On the next page -- and yours may be
16 better than mine -- can you read the date next
17 to generator's signature on that document?

18 A. It's 12, perhaps 16 -- it's not
19 clear -- 1980.

20 Q. Can you for sure read the '80 on
21 there, or are you surmising that it is 80?
22 Mine just has -- looks like two parens?

23 A. I'm using some judgment there, it's
24 not very clear.

1 Q. At the top of that page, where it
2 says -- and I don't know what it says -- would
3 it be correct that at the top of that page, in
4 the left-hand margin, that the page has been
5 cut off from reproduction?

6 A. Yes.

7 Q. To the right on the first line, can
8 you read that page, where it says date shipped
9 or received, other than the 12?

10 A. Appears to be 12/18. If you would
11 like, we can probably look for the original of
12 this document, Mr. Krebs, if that would be
13 helpful. I'm sure we have it in the courtroom.

14 Q. Beg your pardon?

15 A. I think we have the original of this
16 document cover page and better copies in the
17 courtroom, if you would like to see them.

18 Q. I probably do. Would you turn over
19 about two more pages in the manifests,
20 approximately. These aren't numbered, so you
21 have to bear with me.

22 A. What's the manifest number?

23 Q. Well, 00102. Let me know when you're
24 there.

1 A. I'm here.

2 Q. At the bottom, where it says
3 certification on your copy, are the signatures
4 marked out, part of the signature is marked
5 through?

6 A. Yes. It appears that the person
7 above signed below, incorrectly; the signature
8 is the same. That is to say that the
9 transporter's signature was mistakenly put on a
10 line below.

11 Q. On the next page, 00103 Manifest, can
12 you read the signature under where it says
13 certification on the right side?

14 A. The last name is Phipps.

15 Q. What's the first name?

16 A. I don't know. But if you go from
17 document to document, you can pick up the
18 signatures.

19 Q. What's the first digit on the date
20 there, that says transporter date?

21 A. Apparently a three, although it's not
22 clear.

23 Q. Now, you're speculating as to three;
24 is that correct?

1 A. That's correct.

2 Q. Actually looks like half of a paren,
3 does it not, or a half circle?

4 A. I wouldn't agree with that character-
5 ization, but you may --

6 Q. What would you say that is?

7 A. Half of a three.

8 Q. You think it's half of a three?

9 A. Yes.

10 THE COURT: Mr. Krebs, the point
11 here is, there might be a better copy
12 in the courtroom. If so, it would be
13 helpful to see it. Mr. Radell, is
14 there a better copy?

15 MR. RADELL: Yes, Your Honor.
16 This is the original request that was
17 submitted to EPA. It does have
18 copies of the manifests. However,
19 the copies are of a clearer quality
20 and were better centered on the
21 machine, so they are much more
22 legible. (Tendered.)

23 THE COURT: Show that to
24 Mr. Krebs.

1 MR. RADELL: (Tendered).

2 MR. KREBS:

3 Q. Mr. Cooper, let me show you the
4 document that I've been handed and with a
5 Manifest 00100. On the certification, isn't it
6 correct that also on this document, which is
7 whatever original you have, that you can't read
8 the name there, either? (Tendered.)

9 A. It's a better copy, but it is still
10 not legible. However if you would, as I said,
11 go to other copies, you'll find that same name
12 and you'll recognize his signature.

13 Q. So, we're gonna go to other copies to
14 try to determine which -- whose signature this
15 is. On 00108, would that also hold true, that
16 where it says certification for the
17 transporter, that you really can't read the
18 name there either?

19 A. That's true.

20 Q. The 00102 manifest, that's the one
21 that on this copy also shows that the person's
22 name has been marked out and then was resigned?

23 A. Yes.

24 Q. Okay. 00103, would it be correct

1 that on the certification, the first name you
2 cannot read at all on this original copy?

3 A. That's true.

4 Q. Can you read the second name?

5 A. I believe it's Phipps.

6 Q. Is that somewhat speculation? If you
7 just looked at that in a vacuum, would you know
8 that to be Phipps?

9 A. It would be difficult to say for
10 sure.

11 Q. Okay. Is this the one, also, that
12 there's what you call a half three on it?

13 A. That's right.

14 Q. Okay. And this one also would just
15 show a half of a three?

16 A. Yes.

17 Q. Manifest 00106, where it says TSDF
18 Signature, under certification, can you read
19 that name?

20 A. First name is Bob, but I can't read
21 the second name.

22 Q. So we know that the person's name is
23 Bob.

24 THE COURT: Mr. Krebs, I think

1 you're in a position to make your
2 objection.

3 MR. KREBS: We would object to
4 this document going into evidence.
5 Not only is the copy that's been
6 offered into evidence illegible in
7 many instances, including as to who
8 even signed these documents, but the
9 copy provided me by counsel as their
10 original is very very similar;
11 because you can't read names on it,
12 you can't read dates; and there's a
13 total lack of trustworthiness in this
14 document.

15 I realize that the Court or the
16 Judge ruled that the rules of
17 evidence do not apply as to hearsay
18 and authenticity. I'm not only
19 making my objection based upon those,
20 but also on the fact that you can't
21 even read these documents.

22 THE COURT: Mr. Radell, let me
23 see the document that is the
24 original.

1 MR. RADELL: (Tendered). I would
2 point out here, Your Honor, that
3 even -- well, I would point out that
4 the majority of the attachments are
5 legible and that the Complainant only
6 needs to prove that Respondent
7 accepted any quantity of any
8 hazardous waste at all; so that if
9 any of the manifests are legible,
10 that they should be introduced into
11 evidence, then we will use those as
12 evidence.

13 THE COURT: Well, my ruling is
14 as follows: This document is
15 substantially more clear than the
16 copies that we have been looking at.
17 I will receive Number 22, only if you
18 offer this original; because this one
19 is -- I realize there are some that
20 are not perfectly clear as to
21 signature, but a good many of them
22 are. We'll take this one, but not
23 the copies.

24 MR. RADELL: Okay, all right.

1 THE COURT: As for the cover
2 letter, it appears to have high-
3 lighting on it, which I don't think
4 we need in the record. So I suggest
5 that you take one of the copies from
6 the cover letter and use the original
7 attachments. Under those conditions
8 Number 22 will be received.

9 Now, with the documents attached
10 to the original letter -- just to be
11 clear about this -- are the very
12 papers received from ACS; is that
13 right, Mr. Cooper?

14 THE WITNESS: That's correct.

15 THE COURT: And that is what we
16 will be taking into evidence, a
17 duplicate of the cover letter to you,
18 dated October 24th, 1986, and that is
19 Exhibit 22.

20 (Complainant's Exhibit No. 22 is Admitted)

21 D I R E C T E X A M I N A T I O N

22 BY MR. RADELL

23 Q. Mr. Cooper, when you reviewed this
24 document, did you review the original that had

1 been submitted to us by ACS?

2 A. Yes, I did.

3 Q. So, you based your testimony in this
4 regard upon your review of the original
5 document?

6 A. Yes.

7 Q. Could you explain the manifest and to
8 which hazardous waste they relate and where
9 they said that that hazardous waste was
10 transported to?

11 MR. KREBS: For the record, we
12 will object to this witness
13 testifying from the documents that
14 are offered as to hearsay, that he's
15 also indicated that several of them
16 cannot be read as to who even signed
17 them.

18 THE COURT: I will allow the
19 witness to testify from the document.

20 THE WITNESS:

21 A. All of the wastes are manifested as
22 specific Waste F005; and they were shipped,
23 according to these manifests, to Gary
24 Development for disposal.

1 MR. RADELL:

2 Q. In addition to the signatures of the
3 generators and the transporter, do any
4 signatures of the disposal facility receiving
5 the waste appear on these manifests?

6 A. Yes, they do.

7 Q. Could you please just tell us some of
8 the names that appear in that line block?

9 A. P. Craig, the initial P.

10 Q. C-R-A-I-G?

11 A. That's correct.

12 Q. If you could spell them as they
13 appear, for the Court Reporter.

14 MR. KREBS: Can we refer to a
15 page or something, Your Honor, so we
16 can follow?

17 THE COURT:

18 Q. Which manifest are we talking about
19 here?

20 A. Okay, this manifest is Number 00111,
21 it's about a third of the way through this
22 stack.

23 MR. RADELL:

24 Q. Based upon your review of other

1 records concerning Gary Development Company and
2 your inspection of the Gary Development Company
3 facility, do you know who P. Craig is?

4 A. It's a former or maybe present
5 employee with Gary Development; and it was my
6 understanding from conversations with Mr.
7 Hagen, that he was Mr. Hagen's father-in-law.

8 Q. Do any other signatures appear on any
9 of the other manifests?

10 A. Yes.

11 Q. And what signatures, and could you
12 please refer to the manifest number?

13 A. If we go over four pages or so to
14 document 00116, a signature of Bob Foster
15 appears. On the following page, a signature
16 which appears on several of these documents,
17 Brian Boyd, B-O-Y-D. There are a few others
18 that are not as easy to read.

19 Q. All right, that's sufficient. So the
20 signatures of Brian Boyd, P. Craig and Bob
21 Foster appear on some of these manifests?

22 A. That's correct.

23 Q. Turning to the second attachment to
24 the letter, the one that has the letterhead of

1 the State of Indiana at the top --

2 A. Yes.

3 Q. -- can you identify what that
4 document is, what that attachment is?

5 A. This is a generator annual report,
6 Part A, sent to the State of Indiana Environ-
7 mental Management Board.

8 Q. And what does it indicate?

9 A. It indicates that -- I'm not sure
10 what period of time this is referring to, from
11 looking at this document. This is page two of
12 two, and it refers to the EPA Hazardous Waste
13 Number F005, stating that 396 tons of that
14 particular waste were transported to Gary
15 Development.

16 Q. And, now, let's look at the cover
17 letter itself, starting with the paragraph
18 under the caption Provide Documentation of Your
19 Determination, etc., does this paragraph
20 express some confusion as to whether or not the
21 waste was correctly categorized as F005?

22 A. Yes, it does. American Chemical
23 Services in this 3007 request was specifically
24 requested to provide documentation for the F005

1 or any other number that was assigned to this
2 waste as hazardous waste. As you see, this is
3 the cover letter -- there's nothing attached to
4 this document which shows a hazardous -- a
5 waste analyses of the waste that was described
6 and manifested as F005.

7 Q. But this paragraph does express some
8 confusion as to whether it was correctly
9 categorized as F005. Are you familiar with the
10 general operations of American Chemical
11 Service, what sort of facility it is, in
12 general terms?

13 A. It appeared to be a recycling
14 facility for recovering some of the solvents
15 that are spent solvents returned to them from
16 generators for that purpose.

17 Q. Does that paragraph say that American
18 Chemical Service received hazardous wastes that
19 have been categorized by its customers, and
20 that most of those wastes were classified on
21 the basis of their containing Methyl Ethyl
22 Ketone, as F005?

23 A. Yes, it does.

24 THE COURT: Mr. Radell, I know

1 you know how to put questions in a
2 manner that is not leading, and I
3 know you have a geologist on the
4 stand. I would prefer to hear these
5 questions put in a proper direct
6 examination fashion.

7 MR. RADELL: Shall I repeat this
8 question?

9 THE COURT: No, I don't believe
10 you have to repeat that anymore, but
11 let's keep it clean from now on.

12 MR. RADELL:

13 Q. Mr. Cooper, is F005 listed as hazar-
14 dous waste?

15 A. Yes, it is.

16 Q. Are there procedures for delisting a
17 listed hazardous waste?

18 A. Yes, there are.

19 Q. In the Federal and State Regulations?

20 A. Yes.

21 Q. Has American Chemical Service ever
22 submitted information which constitutes such a
23 delisting petitioning?

24 A. Not to my knowledge.

1 Q. Has it -- a delisting petition been
2 granted for F005 for the American Chemical
3 facilities?

4 A. I'm not aware of one.

5 MR. RADELL: This is the
6 original exhibit. (Tendered to the
7 Court.)

8 Q. Are you aware of any communications
9 between U.S. EPA and anyone representing the
10 Gary Development Company, concerning the
11 disposal or treatment of F005 at that facility?

12 A. Yes, I am.

13 MR. RADELL: Your Honor, due to
14 the illegibility of this document for
15 admission purposes, I am going to
16 show it to the witness to refresh his
17 recollection.

18 Q. Is this the communication to which
19 you had referred?

20 A. Yes, it is.

21 Q. Could you please summarize the third
22 paragraph.

23 MR. KREBS: Your Honor, I'm
24 gonna object. You got a document

1 there that counsel has indicated is
2 illegible. Now we're going to have
3 the witness not refresh his memory;
4 he's going to summarize the document
5 which is partly illegible, like the
6 counsel has said. It's totally
7 improper.

8 THE COURT: Yes, Mr. Radell,
9 that's what it sounds like to me,
10 too. Can we clear this up a little.
11 Which document is it?

12 MR. RADELL: It is marked as --

13 MR. KREBS: Number Three.

14 MR. RADELL: Yeah, Number Three.
15 Would you -- I wasn't sure if I
16 should provide you with a copy.

17 THE COURT: Complainant's
18 proposed three, is that it?

19 MR. RADELL: Right, uh-huh.

20 THE COURT: But it's illegible?

21 MR. RADELL: Parts of it are
22 difficult to read.

23 THE COURT: Is there an original
24 somewhere in the courtroom?

1 THE WITNESS: There may be, I'm
2 not sure.

3 THE COURT: Why don't we take a
4 look. If it's partly illegible, I
5 think it would be best for the
6 witness to read from one that isn't.

7 We've been going now for
8 sometime, why don't we take a
9 five-minute recess and look for the
10 document.

11 (Proceedings recessed and continued)

12 THE COURT: Back on the record.
13 At some point during the day, I wish
14 to discuss with counsel the copy of
15 the Indiana Regulations that I will
16 use; and I suggest that you get
17 together about it and decide which
18 one you want me to be referring to.
19 I have the one which Mr. Radell
20 provided, which I showed you briefly
21 yesterday, Mr. Krebs. If you want to
22 look at that again or if you have an
23 objection to it, you make some
24 arrangement between the two of you;

1 because I need something.

2 You may continue your
3 examination.

4 MR. RADELL

5 Q. Mr. Cooper, previously you testified
6 about a letter from EPA to Gary Development
7 Company, concerning EPA's determinations
8 regarding the F005 disposed of at Gary
9 Development facility. Is that a letter which
10 you would keep in your files, in the course of
11 your duties as a RCRA enforcement person for
12 this case?

13 A. Yes, it is.

14 Q. I would like to introduce a document
15 which I have not yet marked -- excuse me, I
16 would like to show this to the witness.
17 (Tendered).

18 Is this a copy of that letter to which you
19 just referred to?

20 A. Yes, it is.

21 MR. RADELL:

22 Q. I would like to move that this be
23 admitted into evidence.

24 MR. KREBS: Is this Number

1 Three?

2 MR. RADELL: Yes, I would
3 introduce it as Complainant's Exhibit
4 Number Three.

5 THE COURT: Mr. Krebs.

6 MR. KREBS: Yes, I have a couple
7 of preliminary questions, Your Honor.

8 V O I R D I R E E X A M I N A T I O N

9 BY MR. KREBS

10 Q. Mr. Cooper, regarding this document
11 which has now been marked Complainant's Exhibit
12 Number Three, a letter dated February 8th,
13 1984, to a John Kyle from -- is it
14 Mr. Klepitsch?

15 A. Klepitsch.

16 Q. Klepitsch. Did you personally
17 participate in the drafting of this letter?

18 A. No, I did not.

19 Q. Did Mr. Klepitsch discuss personally
20 with you any opinions that he gave in this
21 letter?

22 A. No.

23 Q. This copy has no letterhead on top of
24 the front page, of EPA, is that correct?

1 A. That's correct.

2 Q. Would this be one of those
3 photostatic copies of a carbon copy of the
4 original letter that you were discussing
5 yesterday?

6 A. Yes. This is a photocopy of the
7 original record that is kept in our files.

8 Q. Are you the custodian of the file
9 that contains this particular document or would
10 someone else normally have the custody of that
11 file?

12 A. These files are locked in a large
13 room, unless they are signed out for. I have
14 had this file for probably a year and a half at
15 my work area.

16 Q. Who's in charge of the locked room?

17 A. Augusta Bloom.

18 Q. It's her responsibility in keeping
19 that document in that room?

20 A. Yes.

21 MR. KREBS: Your Honor, we will
22 object to this document, on the
23 grounds of, number one, authenticity.
24 This is not a certified document, it

1 is a copy of a copy. It is not even
2 on letterhead of U.S. EPA. The
3 keeper of the records -- I note not
4 even a certification from EPA that
5 this is an accurate copy of the
6 document as contained in their files.

7 Secondly, we would object on the
8 basis of hearsay, that the witness
9 who is sponsoring this exhibit has
10 testified that he did not participate
11 in drafting this letter and did not
12 discuss with the alleged author of
13 this letter any opinions that the
14 author may be giving by this letter.

15 THE COURT: What is the purpose
16 of the offer?

17 MR. RADELL: The purpose of the
18 offer is to demonstrate that it is
19 U.S. EPA's position that the waste
20 disposed of at the facility as
21 Hazardous Waste Number F005 was
22 indeed that waste and not any other
23 waste, and that EPA communicated that
24 fact to Gary Development Company.

1 THE COURT: I'm sorry to keep
2 bringing this up, but it being a copy
3 of a carbon, it is fairly difficult
4 to read.

5 MR. RADELL: Your Honor, I've
6 got the yellow copy right here and
7 went and made a copy -- that's why I
8 was late coming back after the
9 break -- made a copy on the Court's
10 copy machine.

11 THE COURT: Let me see the
12 yellow copy.

13 MR. RADELL: Unfortunately,
14 since these documents are open to the
15 public, someone spilled coffee on it
16 at one point.

17 THE COURT: Somebody spilled
18 something on it. I hope it's not a
19 hazardous waste. It's not at all
20 clear to me that it's coffee. Is
21 Mr. Klepitsch still an Agency
22 employee, Mr. Cooper?

23 THE WITNESS: Mr. Klepitsch
24 died before I started working at the

1 Agency, sometime in mid '85, as I
2 recall.

3 THE COURT: Obviously, you can't
4 bring him to testify about it. This
5 is really a terrible copy. I know
6 it's not your fault; but, honestly,
7 if you're going to sue somebody, it
8 seems to me the least they can do is
9 have a very good copy of important
10 correspondence.

11 I'll receive this, but I find it
12 hard to read; and I see no reason why
13 Xerox copies can't be made of basic
14 correspondence. We will receive this
15 one into evidence and not copies made
16 on the machine here.

17 MR. RADELL: If you would retain
18 it, I believe that the copy of the
19 one the witness has is sufficient for
20 his testimony.

21 (Complainant's Exhibit No. 3 is Admitted)

22 D I R E C T E X A M I N A T I O N

23 BY MR. RADELL

24 Q. Mr. Cooper, could you summarize the

1 contents of this letter, specifically the third
2 paragraph on the first page?

3 A. Basically, U.S. EPA staff was trying
4 to determine whether the F005 waste being
5 discussed, that was handled at American
6 Chemical Services, whether that particular
7 waste could have any other designation or any
8 other hazardous waste number. Specifically,
9 the question was that the waste was only
10 ignitable. And this paragraph states that
11 based on the services or the type of process
12 that is used by American Chemical Services,
13 that waste it designates as F005 could have
14 contained any of the waste that are listed
15 here, listed hazardous waste U147, U031, U112,
16 E00 -- I'm not sure if that's U or D002,
17 perhaps the original would indicate that --
18 U154, D001 --

19 THE COURT: Mr. Cooper, please
20 take the so-called original carbon,
21 and see if you can make it out. Some
22 of that isn't perfectly legible
23 either. (Tendered.)

24 THE WITNESS:

1 A. Looking at the original, I would say
2 it's a U002, and to continue, U154, D001 and
3 F003.

4 Any of those listed wastes could have been
5 included within the waste manifested as F005 by
6 American Chemical Services.

7 MR. RADELL:

8 Q. Okay. Mr. Cooper, if one were to mix
9 this Hazardous Waste F005 with sand, would that
10 remove the characteristics for which it is
11 listed?

12 A. No, it would not. It might dilute
13 it, but it would not change a characteristic of
14 the listed waste.

15 Q. Would it affect at all that waste
16 being listed as F005?

17 A. No, it would not.

18 Q. Would that mixing of this waste with
19 sand constitute treatment for the purposes of
20 the RCRA Regulations?

21 A. Yes, it would.

22 Q. And as such, that treatment would
23 require a permit or to be subject to the
24 interim status standards?

1 A. That's correct.

2 Q. Okay.

3 MR. RADELL: Your Honor, during
4 the recess we went through the
5 document I had marked as
6 Complainant's Exhibit Number 23, of
7 which parts were illegible. We
8 removed six pages from that which
9 remained illegible, and I would like
10 to read those pages into the record
11 and resubmit the exhibit into
12 evidence.

13 THE COURT: Read which pages
14 into evidence?

15 MR. RADELL: The pages that are
16 illegible, and we will thus remove
17 them from the exhibit and not seek to
18 introduce them into evidence.

19 THE COURT: You mean you're
20 going to indicate for the record
21 which pages these are?

22 MR. RADELL: Yes, which pages we
23 are removing.

24 THE COURT: Yes, you may do

1 that.

2 MR. RADELL: They are Manifest
3 Number 275 --

4 MR. KREBS: I'm sorry, but where
5 is the number on there?

6 MR. RADELL: It's here
7 (indicating). Number 282, Number
8 22 --

9 MR. KREBS: Your Honor, I'd like
10 to mark these in my book. Are they
11 in order, numerically?

12 THE COURT: They probably are.

13 MR. RADELL: Could you please --

14 MR. KREBS: Well, if they aren't
15 not in order, I'm not going to be
16 able to follow him.

17 THE COURT: Well, if you would
18 read the numbers and furnish the
19 stack which has been withdrawn to
20 Mr. Krebs, so that he can look at
21 them and adjust his copy, according-
22 ly. Let me at least have the numbers
23 for now.

24 MR. RADELL: Could you please

1 read back the last number that I
2 read?

3 MR. KREBS: The last couple,
4 wherever he started.

5 THE COURT: We have 275 and 282.

6 MR. KREBS: That's 275 and 282.

7 THE COURT: That's as far as we
8 went.

9 MR. RADELL: 2208, 2406, 2412
10 and 2531.

11 MR. KREBS: All right.

12 THE COURT: I guess it's
13 legible. That is being offered
14 again?

15 MR. RADELL: Yes. The rest is
16 being offered into evidence as
17 Complainant's Exhibit Number 23.

18 THE COURT: Mr. Krebs, your
19 objections were that they were
20 hearsay and they were not
21 authenticated?

22 MR. KREBS: Yes. And we would
23 renew those objections. And we would
24 also point out that from our review

1 of those documents, we believe
2 that in addition to our prior
3 objection we will be making at this
4 time, in addition to the fact that
5 Manifest Number 2430 does not have
6 any gallons listed; Number 2422,
7 likewise, has no gallons listed;
8 Number 2406 is the same problem, but
9 that's one that they have deleted, it
10 has no gallons listed; likewise, 2208
11 has no gallons listed, but they did
12 delete that one; 282 has no gallons
13 listed, but they did delete that one.

14 MR. RADELL: Is the reason that
15 there's no gallons listed because the
16 copying has removed that or is it
17 because there is no pages itself?

18 THE COURT: Well, Mr. Radell,
19 you check the numbers that counsel
20 has just mentioned. If it's
21 illegibility, let's remove it; if
22 it's simply missing, I'm not sure why
23 you would offer it, anyway.

24 MR. KREBS: Could I have just a

1 moment.

2 Those are the only things we
3 have.

4 THE COURT: 2430, 2422 are the
5 remaining manifests where there's no
6 gallons?

7 MR. RADELL: Because there was
8 none on the original.

9 THE COURT: What use are they,
10 Mr. Radell?

11 MR. RADELL: Well, I believe
12 that to keep the information request
13 as complete as possible and since
14 they speak for themselves, I don't
15 see why there should be any objection
16 that we have a document into evidence
17 that shows that these are that
18 figure, since we'll be discussing it
19 in the documents that do show the
20 figure.

21 THE COURT: All right. I guess
22 they may not be of much help, but
23 they are part of this submission.
24 Very well, 23 is received. Continue.

1 MR. RADELL: Your Honor, I'm
2 unclear as to whether the original
3 that I -- the document that I
4 originally proposed, the copies that
5 were originally acceptable, are now
6 acceptable, stipulating that we
7 withdraw that; or whether I should
8 submit to you this actual new copy,
9 with the pages actually taken out of
10 it.

11 THE COURT: I would submit the
12 good copy with the pages removed,
13 that have been removed.

14 MR. KREBS: Did you remark it?

15 MR. RADELL: I removed the
16 pages, physically.

17 MR. KREBS: I meant the exhibit
18 number.

19 MR. RADELL: It's the same
20 exhibit number.

21 THE COURT: It's Number 23.
22 These pages do appear to be complete.
23 Okay, you may proceed.

24 MR. RADELL: Since I will not

1 have the witness refer to those
2 specific pages and I do not have a
3 copy, another copy exactly similar to
4 that which I offered into evidence, I
5 would have the witness refer to the
6 copy that I provided him, originally,
7 without referring to the pages which
8 have been stricken.

9 THE COURT: All right. You may
10 use the original for examination,
11 that is a better procedure, just the
12 original as we received it.

13 (Complainant's Exhibit No. 23 is Admitted)

14 MR. RADELL:

15 Q. Mr. Cooper, could you describe the
16 documents attached to this information request
17 response?

18 A. These are hazardous waste tracking
19 forms, which indicate the generator of the
20 Hazardous Waste D008. They describe what the
21 waste is. They describe the disposal service
22 identification, the company that did the
23 transporting of this hazardous waste material,
24 from the generator to the disposal site.

1 Q. How are these wastes described? Can
2 you give us the name of the waste and any
3 identifying number which may be associated with
4 the waste?

5 A. There are at least three types of
6 waste described that have been transported to
7 the disposal company; calcium sulphate, which
8 under special handling instructions says
9 Hazardous Waste Solid Numbers ID 9189, Lead.

10 Q. Could you explain what Numbers ID
11 9189 is, what that signifies?

12 A. Those numbers are the Department of
13 Transportation numbers associated with the
14 lead-bearing waste being transported.

15 Q. Okay. And what other wastes are
16 there identified on the manifests?

17 A. I see one in the manifests that has
18 the reverb -- R-E-V-E-R-B -- reverb slag, with
19 the same designation under special handling,
20 Hazardous Waste Solid Numbers ID 9189 Lead.

21 Q. And is there any other waste referred
22 to?

23 A. Some waste that is described as
24 rubber battery chips. The designation under

1 special handling is the same as what I've
2 indicated for the previous two.

3 Q. Are these documents -- have they been
4 signed? By whom have they been signed or by
5 representatives of whom?

6 A. These indicate that waste was shipped
7 from generator, and it has the generator's
8 signature. It has the transporter's signature,
9 and it indicates the disposal site is Gary
10 Development Landfill.

11 Q. What is the name of the -- well,
12 we've already established that USS Lead
13 Refinery is the generator. What is the name of
14 the disposal service, the transporter?

15 A. Industrial Disposal Corporation.

16 Q. Okay.

17 A. May I add one more thing that I see
18 that does not appear on all manifests, under
19 the special handling instructions. Some of the
20 waste have, in addition to the Department of
21 Transportation Number, also have the U. S. EPA
22 hazardous waste number for EP toxic
23 characteristic waste for lead, D008.

24 Q. Mr. Cooper, are you aware of any

1 sample results of these -- of any of these
2 wastes?

3 A. Yes, I am.

4 Q. Do these sample results indicate
5 whether or not any of these wastes meet the
6 criteria for being listed for lead, as
7 hazardous waste for lead?

8 MR. KREBS: Objection, Your
9 Honor. If there are analytical
10 analyses of these particular wastes,
11 the best evidence would be the
12 document itself or the analytical
13 laboratory, certified by the lab and
14 how they did the analyses; what
15 procedures were used, what quality of
16 assurance, what quality of control
17 they used under the EPA requirements.
18 There are actual requirements for
19 testing, by the regulations, the labs
20 have to go through. That's the best
21 evidence, not this witness' memory of
22 what he recalls may have been in some
23 document or someone may have told him
24 about the chemical analysis of waste.

1 THE COURT: Well, I'm willing to
2 hear whether he knows how to define
3 as to what the results were; and,
4 agreed, the best evidence is probably
5 something else.

6 You may answer the question as
7 it was put.

8 THE WITNESS:

9 A. I am aware of at least one document
10 described in two of the wastes we've mentioned
11 on these hazardous waste manifests.

12 MR. RADELL:

13 Q. Which two?

14 A. Calcium sulphate sludge and the
15 battery, broken battery -- rubber battery
16 chips, I believe, is the way it's written on
17 that letter.

18 Q. Does that letter or does that
19 document analyses, that you're aware of,
20 identify -- does it indicate whether or not
21 those two wastes have lead concentrations which
22 would classify them as being hazardous waste
23 for lead?

24 MR. KREBS: Same objection. He

1 just now testified there is a
2 document in existence; and instead of
3 producing the document, we're now
4 going to hear what this witness
5 thinks the document says.

6 THE COURT: Is there a document,
7 Mr. Radell?

8 MR. RADELL: Yes, there is a
9 document, but I'm not aware of the
10 exact -- I was just trying to
11 establish, you know, his review of
12 the file and whether he is aware of
13 any document. And then, independent-
14 ly, I was going to introduce the
15 document to prove the validity of the
16 document.

17 THE COURT: Are you going to
18 introduce the document he's
19 discussing?

20 MR. RADELL: Yes.

21 THE COURT: Well, why don't we
22 have that now.

23 MR. RADELL:

24 Q. I am showing the witness a document

1 which I have marked as Complainant's Exhibit
2 Number 25. (Tendered).

3 Mr. Cooper, is this the document to which
4 you referred?

5 A. Yes, it is.

6 Q. Could you identify the document?

7 A. This is a document submitted by USS
8 Lead to U.S. EPA that --

9 Q. I would like -- oh, I'm sorry.

10 A. It discusses the results of EP
11 toxicity tests that were done on two specific
12 wastes.

13 Q. Okay. Without getting into details,
14 I just want you to identify it for the purposes
15 of introduction. Is it signed by -- is it
16 signed by anyone?

17 A. Yes, it is.

18 Q. And who signed it?

19 A. V. Wayne McCoy, M-C-capital-C-O-Y.

20 Q. Is there a seal next to the
21 signature?

22 A. Yes, there is.

23 Q. Do you know what that seal indicates?

24 A. It is a signature and a seal of an

1 engineer. I'm not sure if it's a professional
2 engineer, it's hard to read the seal; but I
3 myself copied this document from the original,
4 sometime ago, in the file for the USS Lead.

5 Q. And you saw that seal?

6 A. Yes, I did.

7 Q. And it was a seal of an engineer?

8 A. I can't say what type. It's an
9 engineer's seal, yes.

10 MR. RADELL: I would like to
11 move to introduce this document into
12 evidence.

13 THE COURT:

14 Q. Mr. Cooper, you copied this document
15 yourself and you cut off the bottom of it?

16 A. This is a copy of a copy, Your Honor.

17 Q. When did you get this?

18 A. I imagine I got this document August
19 of 1966, perhaps September of '66 -- '86, I'm
20 sorry, 1986, for the record.

21 Q. And from whom did you get it?

22 A. I went to the file for USS Lead, to
23 look for documentation that they had submitted
24 to U.S. EPA to describe waste analyses done on

1 their particular waste.

2 Q. So, this was in the file? Do you
3 recall under what circumstances and in response
4 to what requests this may have been submitted?

5 A. I'm not sure.

6 THE COURT: Mr. Krebs.

7 MR. KREBS: I would like to ask
8 some preliminary questions for the
9 purposes of the objection, Your
10 Honor.

11 V O I R D I R E E X A M I N A T I O N

12 BY MR. KREBS

13 Q. Mr. Cooper, the document in front of
14 you, at the bottom of the left of yours, does
15 it say "resource"?

16 A. Yes.

17 Q. Okay. And the copy that you're
18 sponsoring into evidence, where it has the seal
19 you're talking about, it appears to say "state
20 of Tennessee"; is that correct?

21 A. That's correct.

22 Q. But the portion in the middle, are
23 you indicating is fairly illegible? Was that
24 the part you were looking at on your copy?

1 A. Yes.

2 Q. You say you believe -- you say McCoy,
3 you believe he's an engineer?

4 A. That appears to be what this seal on
5 it indicates.

6 Q. But you don't know what kind of an
7 engineer he is; you don't know whether he's an
8 electrical engineer or chemical engineer or
9 geological engineer?

10 A. I don't know.

11 Q. Or mechanical engineer?

12 A. I don't know.

13 Q. It does not say anywhere on there
14 that Mr. McVay (sic) is a chemist, does it?

15 A. Not legibly.

16 Q. Does it indicate anywhere on here
17 what the laboratory is that did these analyses?

18 A. No. It might be cut off at the
19 bottom.

20 Q. When you copied this, you said an
21 original of this document exists in an EPA
22 file?

23 A. Yes.

24 Q. You copied that original?

1 A. Yes.

2 Q. Was there anything attached to the
3 original, other than this one page?

4 A. I don't recall anything being
5 attached to it.

6 Q. Okay. Have you seen, regarding this
7 document, any quality assurance, QA/QC
8 documentation, as to the laboratory being
9 authorized to make tests of these types of
10 chemicals?

11 A. No.

12 Q. And how procedures were administered?

13 A. No.

14 Q. Do you have any idea whether they
15 followed the guidelines set forth in the
16 Resource Conservation Recovery Act for testing
17 of chemicals?

18 A. No.

19 Q. Isn't it a common practice in this
20 business that laboratories, in submitting
21 chemical analyses, will provide detail of
22 the -- in fact, even cite the regulations as
23 to the testing procedures they utilized and
24 certify that? Isn't the normal course of how

1 laboratory results are sent to EPA?

2 A. Would you repeat the question.

3 Q. In the normal course of most labora-
4 tory results, from analyses by laboratories in
5 sampling sent to EPA, isn't it correct that
6 most laboratories set forth in the reporting
7 document the specific procedures they used on
8 the analysis, and certify how they ran the
9 laboratory tests?

10 A. I don't know that that's done in
11 every case. It's not uncommon to be done in
12 that way, yes.

13 Q. Assuming there is a laboratory that
14 analyzed these wastes and then wrote up this
15 report, where is the laboratory located?

16 A. I don't know.

17 Q. The dates here on the document for
18 the sampling are September, '83. The document
19 that you say this relates to for waste upon the
20 the tracking forms, the forms dated 1981 and
21 1982, how do you know that waste sample in
22 1983, September '83, was the same waste that
23 was allegedly transported in 1981 and 1982,
24 other than it's the same company?

1 A. I would just assume that, based on
2 the manifest of D008 listing on the manifest.

3 Q. But if we really want to determine
4 the chemical compositions of waste generated
5 and allegedly shipped and disposed in 1981,
6 wouldn't we want the chemical analyses of the
7 waste done in 1981, not analyses done in 1983?

8 A. It would be preferable.

9 MR. KREBS: Your Honor, we would
10 object to this document. It's
11 totally unauthenticated, it's
12 hearsay. It doesn't meet any of the
13 requirements under the Resource
14 Conservation Recovery Act for the
15 testing of waste. There is a
16 specific procedure. We don't even
17 know the name of the laboratory who
18 allegedly tested this waste. We
19 don't know, the man's signature here,
20 what kind of engineer he is. It
21 certainly doesn't say he's a chemist;
22 and I personally don't know of any
23 engineers that do chemical,
24 analytical testing. All we know is

1 that he's some engineer from the
2 State of Tennessee. That's the
3 wealth of our knowledge from this
4 document.

5 There's a name on here. There's
6 no representation that even Mr. McVay
7 (sic) has even been contacted,
8 whether he's dead or whether he is
9 available for trial, whether there
10 was any communication whatsoever with
11 the laboratory. There's no quality
12 assurance, quality control.

13 And thirdly, there is no
14 foundation, there is no foundation
15 that this document is related to the
16 waste that they've set forth in
17 Document Number 23. They have no
18 idea whether it's mentioned in there.
19 There's totally no foundation and
20 there's no relevance to this
21 document.

22 THE COURT: I'm going to exclude
23 this one, Mr. Radell, and for the
24 following reasons. I can't tell what

1 laboratory did it. The only thing we
2 know about its origin is that it came
3 out of the file pertaining to this
4 case on this Respondent. And it
5 doesn't bear any clear relationship;
6 in fact, no relationship at all, to
7 the materials sent that are
8 manifested. I just don't think we
9 know enough about this to base any
10 findings on it. I would not feel
11 that I could base findings on it, if
12 what we are asking -- if what you are
13 going to ask me to base on this is
14 that material shipped meets this
15 analyses. Maybe you're offering it
16 for some other purpose.

17 MR. RADELL: I was offering it,
18 essentially, for that purpose. I
19 thought --

20 Q. Mr. Cooper, didn't you say the Agency
21 came into possession of this through the USS
22 Lead file and not this Respondent's file?

23 THE COURT: Excuse me, I think I
24 misstated it. He did say that. But

1 he was not able to testify for what
2 purpose it was submitted and what
3 specific request preceded the receipt
4 of this document. Unless some more
5 of that can be cleared up -- and even
6 so, if I go back to my original
7 proposition, we can't tell who did
8 this. The bottom has been cut off,
9 and certainly we don't know enough
10 about it for me to draw the
11 conclusions that you're going to
12 propose. So as for this time, this
13 one is out.

14 (Complainant's Exhibit No. 25 is Rejected)

15 D I R E C T E X A M I N A T I O N

16 BY MR. RADELL

17 Q. Are there any procedures, once the
18 waste has been classified as D008, to somehow
19 declassify it as such?

20 A. No. It's a listed hazardous waste --
21 or it's an EP toxic waste, and if you -- you
22 could put a delisting for it; but in the
23 concentrations, if it's over the five
24 milligrams per liter, it would be EP toxic and

1 still be listed as D008.

2 Q. Regarding the K087 and the F005,
3 there were EPA background documents that
4 demonstrated why EPA considered those materials
5 hazardous. Is there such a document for D008?

6 A. Yes, there is.

7 Q. I would like to show the witness a
8 document which I have marked as Complainant's
9 Exhibit Number 18. (Tendered).

10 Is this the background document for EP
11 toxicity characteristic?

12 A. Yes, it is.

13 Q. Does that include the characteristic
14 of EP toxicity for lead?

15 A. Yes.

16 Q. Okay.

17 MR. RADELL: I would like to
18 move to admit this into evidence.

19 THE COURT: Mr. Radell, for the
20 benefit of reviewing authorities --
21 not all of whom are EPA employees --
22 would you ask your witness a few
23 questions about what a background
24 document is, so that the record will

1 be clear as to what generated this
2 particular document or this type of
3 document.

4 MR. RADELL: I'm sorry, I
5 thought I had made that clear with
6 the KO87; and since this is the same
7 type of document, it would be
8 relevant to this.

9 THE COURT: All right. I have
10 to hear it again, for the record.

11 MR. RADELL: Okay.

12 Q. Mr. Cooper, what generated this
13 document? Why did the Agency create this
14 document?

15 A. This document was created to look at
16 several hazardous materials, to determine if
17 those materials should be listed as hazardous
18 waste. Scientists were employed and others
19 employed in the reviewing of data, making
20 scientific test analyses on materials. The
21 background document describes the concerns and
22 the reasons for listing the various wastes as
23 hazardous for what constituents; and it also,
24 as I said earlier, includes comments and

1 responses to comments from the public regarding
2 the document. It is not finalized, initially.
3 There's a considerable amount of work; it's a
4 lot of research going into it. There are
5 models included, discussed within the document.
6 The rationale basis for listing each as
7 hazardous waste is outlined in the document.

8 THE COURT:

9 Q. So, there's a document like this for
10 every material that ends up being listed in the
11 regulations --

12 A. Yes.

13 Q. -- as hazardous waste?

14 A. That's correct.

15 THE COURT: Mr. Krebs.

16 MR. KREBS: I have a few
17 preliminary questions again.

18 V O I R D I R E E X A M I N A T I O N

19 BY MR. KREBS

20 Q. Mr. Cooper, who are the individuals
21 which did all of this research that you're
22 talking about related to the document?

23 A. I'm not aware of who was involved.

24 Q. Have you read this document?

1 A. I've read portions of the document.

2 Q. Is it correct, based upon your
3 reading a portion of the document, that there's
4 not even names of any authors in this document,
5 except for the bibliography of the text
6 somebody referenced?

7 A. That's correct.

8 Q. Now, where did you -- where did you
9 obtain this document from?

10 A. This document is kept on the floor in
11 which I work in EPA, Region V, along with other
12 documents at the same Agency.

13 Q. Okay. Did you copy this or somebody
14 else copied it?

15 A. Someone else did.

16 Q. Do you know who?

17 A. No.

18 Q. Is there any reference in here,
19 whatsoever, to U.S. lead or Gary Development in
20 this document?

21 A. No.

22 MR. KREBS: Your Honor, we will
23 object to the document. Number one,
24 it is not relevant. There's been no

1 proper foundation laid for the
2 admission of the document, and
3 there's no reference in the document
4 to the waste of USS Lead or to Gary
5 Development. The document has not
6 been properly authenticated. We
7 don't know who copied the document,
8 there's no certification on it. We
9 don't know who authored the document.
10 In fact, the front page, it says EP
11 toxicity characteristics; and that's
12 all it says. This is nothing but
13 hearsay and not authenticated.

14 THE COURT: Number 18 will be
15 admitted as an official document of
16 the Agency, describing characteris-
17 tics of the material in question
18 here. However, I have to admit this
19 one. Number 18 is admitted.

20 (Complainant's Exhibit No. 18 is Admitted)

21 D I R E C T E X A M I N A T I O N

22 BY MR. RADELL

23 Q. Mr. Cooper, have you read the parts
24 of this document which pertain to D008?

1 A. Yes, I have.

2 Q. Could you briefly summarize the
3 concerns of the Agency in listing this as a
4 hazardous waste.

5 MR. KREBS: Objection. The
6 document speaks for itself, it's the
7 best evidence, it's in the record.
8 This witness has even testified he's
9 only read portions of the document.
10 How is he going to summarize a
11 document which he's only read
12 portions of it?

13 MR. RADELL: He's summarizing
14 the portions that are relevant to
15 this proceeding.

16 THE COURT:

17 Q. The question is, what were the
18 characteristics of D008?

19 A. It's an extraction procedure of
20 toxicity for the presence of lead in amounts
21 greater than 5.0 milligrams per liter.

22 Q. Well, have you reviewed the portion
23 of the document that deals with that,
24 Mr. Cooper?

1 A. I've reviewed the concerns of the
2 Agency in listing these -- all of these EP
3 toxic substances that are listed. I could --
4 they're spelled out for you on page 14, 15.

5 The Agency was concerned with long-term,
6 low-level affects of all of these in the
7 groundwater, all of the EP toxicity elements
8 that were compounds of which lead is one;
9 concerned with carcinogenicity, cancer causing;
10 mutagenicity, changes to the DNA;
11 teratogenicity, which involves birth defects
12 that can be created; concerned with groundwater
13 and surface water contamination and the effect
14 on fish; phytotoxicity, another concern with
15 all of these EP toxic elements; and there was
16 also a concern for these materials being able
17 to bio-accumulate in animal tissue, and over
18 long periods of time cause damage.

19 MR. RADELL: Your Honor, this is
20 the original that contains Number 23.

21 (Tendered).

22 Q. Mr. Cooper, you've just testified
23 over -- well, over yesterday and today about
24 your general awareness of the violations at the

1 Gary Development Company and concerns about the
2 nature of the wastes allegedly handled there
3 and about the potential for harm which they may
4 cause to the environment. Did you -- did you
5 calculate the penalty in this case, the
6 proposed penalty?

7 A. Yes, I did.

8 Q. Did you base your calculation on the
9 same information about which you've testified
10 yesterday and today?

11 A. Yes.

12 Q. Did you base your calculation on any
13 of the official EPA documents?

14 A. Yes. I calculated the penalty
15 according to the procedures outlined in a May,
16 1984 document, entitled RCRA Civil Penalty
17 Policy.

18 Q. Okay. I am showing the witness a
19 document marked as Complainant's Exhibit Number
20 29. (Tendered).

21 Could you please identify this document.

22 A. These are my calculations for the
23 proposed penalty against Gary Development.

24 Q. You prepared these yourself?

1 A. Yes, I did.

2 Q. In your regular course of duties in
3 the RCRA Enforcement Section of EPA?

4 A. Yes, I did.

5 MR. RADELL: I would move that
6 this document be introduced into
7 evidence as Complainant's Exhibit
8 Number 29.

9 THE COURT: Mr. Krebs.

10 MR. KREBS: Based upon my
11 files -- and if I'm wrong, counsel
12 can correct me -- I don't believe
13 this document appears on their
14 exhibit list.

15 MR. RADELL: This document does
16 not appear on the exhibit list. I
17 explained that to Mr. Krebs
18 yesterday, and offered him a copy of
19 the document yesterday and he
20 declined to accept it.

21 THE COURT: Anything further?

22 MR. KREBS: The fact that they
23 offered me a copy of a document the
24 day of the trial and this Judge

1 ordered documents to be exchanged
2 months ago, and it was done to
3 correct their error. This case has
4 been set for hearing twice. The
5 documents should have been exchanged
6 a long time ago. And now we have a
7 document which they have not indi-
8 cated newly discovered; the witness
9 has not indicated that it didn't
10 exist when they had document
11 exchange. There was no reason given
12 as to why this wasn't introduced
13 previously.

14 THE COURT: Mr. Radell, why was
15 this not exchanged?

16 MR. RADELL: It has been an
17 oversight on my part, Your Honor.

18 THE COURT: Well, my feeling
19 about this is we can spend a lot of
20 time having the witness go over it
21 and testify about it; or we can
22 simply put it in, even though it
23 constitutes a surprise to some
24 extent. It isn't a very complicated

1 matter; and I think it's a lot
2 shorter to put this in as a basis for
3 the penalty calculations, than to
4 have the witness go over each of the
5 categories and his reasoning, which
6 this document entails for suggesting
7 what the penalty is. So, I'm going
8 to admit it. Number 29 is admitted.

9 (Complainant's Exhibit No. 29 is Admitted)

10 MR. RADELL:

11 Q. Mr. Cooper, what I would like you to
12 do is just explain how you calculated this
13 document, based upon the RCRA Penalty Policy.
14 Just explain, for example, the penalty on the
15 first sheet and how you based it upon the --
16 upon the RCRA Penalty Policy and whether or not
17 you held that same procedure for each
18 individual violation?

19 A. The RCRA Civil Penalty Policy
20 consists of a matrix; and on the X-axis and the
21 Y-axis of those matrixes, there are two
22 factors. The one factor is potential for harm;
23 and on the other axis, extent of deviation from
24 the regulation.

1 Q. And that is potential for harm to
2 what?

3 A. To the environment or to exposure to
4 hazardous waste.

5 Q. Is it just potential for --

6 A. There are two factors in potential
7 for harm which is considered. First of all,
8 potential harm to the environmental exposure to
9 hazardous waste. The second factor involves
10 potential harm or likely adverse effect that
11 might become on the program, the RCRA program
12 itself or the regulatory procedures for
13 implementing that program, based on
14 noncompliance of the facility with certain
15 regulations.

16 Q. All right. Please continue with your
17 explanation.

18 A. Okay. So the two factors, potential
19 harm category and the extent of deviation, are
20 broken up into three categories: minor,
21 moderate, major; and so our matrix then becomes
22 a matrix with nine cells in the matrix.

23 So, in this case, I looked at the general
24 waste analyses plan and regulation requiring

1 that plan; and I, for the category extent of
2 deviation, I chose the cell for extent of
3 deviation as being the major; and that is
4 because based on the penalty policy which I
5 have, that is substantial noncompliance. They
6 did not have a waste analyses plan.

7 Q. And that reason is what is listed on
8 the back here?

9 A. Yes. On the back of these sheets,
10 you'll see more of a narrative of the reasoning
11 behind placement in those categories. If you
12 don't have something, that can certainly be
13 classified as substantial noncompliance, if
14 you're required to have that. So the category
15 was simple to pick out in that case.

16 Q. So, you calculated the penalties by
17 looking at the two axis of the matrix, one
18 being potential for harm, the other being
19 extent of deviation; then you chose the cell
20 within that range and chose a penalty amount
21 that was in that cell.

22 A. Yes. And in most cases, I followed
23 the RCRA Civil Penalty Policy and picked the
24 midpoint; as in this case, you can see the

1 range of that particular matrix cell shows it
2 was 8,000 to 10,999. I picked the midpoint of
3 95 hundred for that violation.

4 Q. And you did this for each violation
5 alleged in the complaint, which would form the
6 basis of a penalty?

7 A. That's the procedure I followed in
8 each category, each violation.

9 Q. All right. Did you -- is this the
10 only time you calculated the penalty for the
11 Gary Development Company facility? Did you
12 ever calculate it before?

13 A. The original calculation was higher
14 than this calculation.

15 Q. How high was it?

16 A. I think the original figure was
17 197,000 dollars.

18 Q. And why did -- why is it different
19 now than it was before?

20 A. The Section Chief, in reviewing the
21 documents, wanted me to remove 80,000 dollars;
22 because he felt that the financial benefits
23 stated on the original sheets that I
24 calculated -- financial, economic benefit for

1 not having financial assurance for closure and
2 liability coverage, he felt that the figures
3 were too high, the way that it had been
4 calculated.

5 Q. Okay. So, then, this penalty is the
6 final penalty and is lower than the one that
7 you had originally calculated?

8 A. That's correct. It's the proposed
9 penalty of the last reworking of the figures.

10 Q. Okay.

11 MR. RADELL: I have finished
12 with my direct examination of this
13 witness.

14 THE COURT: Mr. Krebs, I know
15 that you're an eater of lunch. Do
16 you wish to go to lunch now?

17 MR. KREBS: I've reconsidered my
18 plan here, and I would -- one of the
19 witnesses who we subpoenaed has been
20 here since before 9:00 o'clock. He
21 returned to the courtroom, I think,
22 just a few minutes; and I would like
23 to place him on the stand at this
24 time, out of order. I don't think

NOTES

1 his testimony would be extensive, so
2 that perhaps we could accommodate
3 him. He did tell me this morning
4 that he does have an important
5 meeting to attend this afternoon, I
6 think one of his superiors in his
7 company.

8 THE COURT: Mr. Radell, I see no
9 reason why we can't accommodate this
10 witness, if you're willing.

11 MR. RADELL: Yes, I'm willing,
12 under the circumstances.

13 THE COURT: Very well.
14 Mr. Cooper, you may step down now and
15 remain at hand for cross-examination
16 when that occurs. Call your witness,
17 counsel.

18 MR. KREBS: Call Mr. Carl
19 Broman.

20 (Witness Summoned and Sworn by Reporter)

21 CARL BROMAN,
22 having been first duly sworn, was examined and
23 testified as follows:

24 D I R E C T E X A M I N A T I O N

BY MR. KREBS

1
2 Q. Would you state your full name,
3 please.

4 A. Carl Broman.

5 Q. And, Mr. Broman, what is your
6 occupation?

7 A. I'm superintendent in charge of
8 Environmental Control for LTV's plant at East
9 Chicago.

10 Q. Okay. And how long have you held
11 that position as Superintendent for
12 Environmental Control?

13 A. 20 plus, 25 years.

14 Q. Okay. And in that capacity, who do
15 you report to?

16 A. I reported to several individuals,
17 but basically I report to the district manager.

18 Q. Okay. The district manager for the
19 company?

20 A. For the Indiana Harbor Works.

21 Q. Okay. And is he located also in East
22 Chicago or a similar location?

23 A. Yes, sir, he's located in East
24 Chicago.

1 Q. Okay. Can you summarize for us your
2 job responsibilities during, let's say, the
3 last five years?

4 A. My responsibility is to be concerned
5 about the liabilities of the company, to advise
6 the manager if there are any liabilities that
7 exist; two, and in doing that, I monitor the
8 various environmental control activities in the
9 plant. I'm also responsible for the paperwork,
10 forms, letters that are required by the various
11 regulatory agencies. Plus, I am the person who
12 is responsible for the varied visitations;
13 coordinate those visitation trips, tests and
14 etc.; and to allow the operating departments to
15 do their job and to take over their responsi-
16 bility.

17 Q. Okay. Do you have other individuals
18 who work under you and report to you in this
19 area, environmental area?

20 A. Yes, sir; yes, sir.

21 Q. How many?

22 A. One, two, -- three right now. But,
23 of course, I have assistance from the corporate
24 staff in corporate matters, matters dealing

1 with Washington; I have Engineering Department,
2 that assists where needed; also rather liberal
3 use of outside contractors, engineering type
4 contractors, consultants, when I run into any
5 particular, specific case.

6 Q. Okay. What is your educational
7 background?

8 A. I am a graduate of Purdue University,
9 Mechanical Engineer.

10 MR. KREBS: If I could have a
11 moment, Your Honor. Twenty-six is
12 what I need, Your Honor, to make it
13 short.

14 THE COURT: (Tendered.)

15 MR. KREBS:

16 Q. Mr. Broman, are you familiar with
17 Gary Development Company in Gary, Indiana?

18 A. Yes, sir.

19 Q. Are you familiar with Mr. Hagen?

20 A. I've met Mr. Hagen on a couple of
21 occasions.

22 Q. Okay. Have you ever personally been
23 to Gary Development Company's facility, his
24 landfill?

1 A. Yes, sir.

2 Q. When was that?

3 A. Oh, it must have been six, seven,
4 eight years ago. I don't remember.

5 Q. Okay. And what was the purpose of
6 your visit at that time?

7 A. I was over there on just a general
8 type inspection, and I came over with Dan
9 McArtle, just a general review, nothing
10 specific.

11 Q. In waste that your company did or may
12 have disposed of at Gary Development, do you do
13 any of your own transporting of waste? Do you
14 have your own trucks to transport waste for
15 disposal?

16 A. No, sir.

17 Q. Okay. Do you use independent
18 haulers?

19 A. Yes, sir.

20 Q. Okay. Do you use various haulers or
21 just a specific one or two?

22 A. We tend to go with one hauler for a
23 while; then we switch to a second hauler,
24 depending upon circumstances, a change in the

1 company to better prices. In some cases it
2 might be a particular type of waste, we will go
3 with a hauler associated with that waste.

4 Q. Okay. Regarding the disposal of
5 waste from your company, when you pay for the
6 disposal, do you pay the hauler, the
7 transporter; or do you pay the disposal
8 facility, directly?

9 A. We pay -- generally pay the hauler.

10 Q. Okay. Do you recall --

11 A. He --

12 Q. I'm sorry.

13 A. He generally acts as the contractor.

14 Q. Do you recall ever paying Gary
15 Development, your company paying Gary
16 Development, directly, for disposal of waste at
17 Gary Development?

18 A. I really wouldn't know, because I
19 generally keep out of the financial end of it.
20 I don't want to be influenced by price on that.

21 Q. There are two documents in front of
22 you which have been admitted into evidence, one
23 of which you have right there. It's
24 Petitioner's, I believe, or Complainant's

1 Number 26. I believe you may have, in fact,
2 been in the courtroom here today, when this
3 document was discussed; is that correct?

4 A. Yes, sir.

5 Q. On the bottom of this document, is
6 that a copy of your signature?

7 A. Yes, sir.

8 Q. Okay. And this would be a form that
9 you filled out for filing with the State of
10 Indiana?

11 A. Yes, sir.

12 Q. Okay. At the bottom of the page
13 there is a certification that says -- and part
14 of it is missing, I might add -- but it starts,
15 "certify under penalty of law that I have
16 personally examined and am familiar with the
17 information submitted in this and all attached
18 documents; and I have based -- and that based
19 on my inquiry of those individuals immediately
20 responsible for containing the information --
21 I'm sorry, obtaining the information, I believe
22 that the submitted information is true,
23 accurate and complete." Okay, that's -- well,
24 let me read it all. It says, "I am aware that

1 there are significant penalties for submitting
2 false information, including the possibility of
3 fine and imprisonment."

4 I'm not even suggesting that's what we're
5 here about; but in connection with that
6 statement, you indicated you were basing your
7 reported information here, based on inquiries
8 of individuals immediately responsible for
9 obtaining the information. Who would those
10 people be, related to the waste described in
11 this document?

12 A. That information would be obtained,
13 in this particular case, would be obtained from
14 records from the hauler, also be obtained from
15 records from the generator.

16 Q. Which would be your records?

17 A. Yes, they would be our records.

18 Q. And you'd review the records of the
19 hauler who you contracted with; and then fill
20 out this report, based upon that?

21 A. Yes. When I say records, I think in
22 this particular case these records -- company
23 records were maintained by a second department,
24 but I had access to those records and now,

1 indeed, have taken those records over.

2 Q. Okay. Mr. Broman, regarding the tar
3 decanter sludge that's listed on this Document
4 Number 26, do you personally have any knowledge
5 as to whether that waste was actually disposed
6 of at Gary Development?

7 A. No, I can't say, personally, that it
8 was.

9 Q. I would like to hand you now an
10 exhibit which has been admitted into evidence
11 as Petitioner's Exhibit 20 -- or Complainant's
12 Exhibit 20, whichever, which appears to be a
13 letter dated October 29th, 1986, to U.S. EPA
14 from a Mr. Larson, I believe. Have you ever
15 seen this letter before? (Tendered.)

16 A. Yes. In fact, I'm here as getting a
17 copy.

18 Q. Shows that a copy went to you of this
19 letter?

20 A. Yes.

21 Q. Have you ever reviewed the documents
22 that are attached to this letter?

23 A. Yes, I did; because this was a what
24 we call a 3007, which is a request for

1 information. This particular diagram, I
2 remember I contacted the Engineering Department
3 and asked them for this particular diagram.

4 Q. Regarding the manifests of Jones and
5 Laughlin which are attached to this letter, do
6 you have any personal knowledge as to whether
7 the waste set forth on that, regarding the tar
8 decanter sludge -- the only thing I'm asking
9 you about -- do you have any personal knowledge
10 whether the waste set forth on those manifests
11 was actually disposed of at Gary Development?

12 A. I have no personal, first-hand
13 knowledge of that, no.

14 Q. Would any information you have be
15 based, as you've discussed previously, upon
16 reviewing things like generator records and
17 transporter records?

18 A. That's right.

19 MR. KREBS: We have no further
20 questions of this witness.

21 THE COURT: Cross-examine,
22 Mr. Radell.

23 C R O S S - E X A M I N A T I O N

24 BY MR. RADELL

1 Q. Mr. Broman, are you aware that
2 Hazardous Waste Number F006, as generated by
3 Jones and Laughlin Steel, has been the subject
4 of a delisting petition?

5 A. I did not hear after F00 --

6 Q. Six?

7 A. F-double-06 or triple-0-6.

8 Q. Double-06?

9 A. All I heard this morning was tar
10 decanter sludge. Are you talking about --

11 Q. Oh, okay. I just was talking about
12 in your capacity as the Environmental -- the
13 Superintendent of the Environmental Control
14 Department of what was Jones and Laughlin
15 Steel, just your general knowledge of the
16 hazardous waste at the facility and whether or
17 not they are hazardous?

18 A. I have -- it is my responsibility to
19 know whether certain waste are hazardous or not
20 hazardous, the status of any negotiations on
21 that, I mean, if that's what you mean.

22 Q. Well, for instance, the annual
23 generator's report that you've signed and
24 Mr. Krebs just showed you, on the second page

1 of that it identifies two hazardous wastes,
2 F006 and K087, as having been shipped to Gary
3 Development Company.

4 A. Yes.

5 Q. And I was wondering if you were aware
6 if either of those two have been the subject of
7 the delisting petition and were considered for
8 any period of time not to be a hazardous waste?

9 A. The F006 was the subject of
10 delisting, the tar decanter sludge was not.

11 Q. It was not. To your knowledge, did
12 Jones and Laughlin ever petition to have K087
13 delisted?

14 A. No.

15 Q. And you've testified that you have no
16 personal knowledge as to whether or not the
17 K087 was actually shipped to Gary Development
18 Company?

19 A. As I interpret the way you ask the
20 question, do I have personal knowledge, no, I
21 was not there; I did not follow the truck over,
22 nor did I see the truck delivered or the
23 materials delivered.

24 Q. So what do you base your certifica-

1 tion to this document that the waste did go to
2 Gary Development Company on?

3 A. Documents that indicate the material
4 was picked up, that there was a manifest made;
5 that a trucker signed a document saying that he
6 had picked it up and that there was a document
7 stating that it was delivered and I have on
8 hand a copy of those documents. And they are
9 all numbered, all tied together, and they are
10 actually all as one unit.

11 Q. Okay. And, lastly, this hauler that
12 you used to take these wastes, Industrial
13 Disposal Corporation, to the best of your --
14 well, given the fact that you routinely do
15 business with this hauler and you do business
16 in this field in general, is this a reputable
17 hauler, on the basis of your knowledge of the
18 business community?

19 MR. KREBS: I'm going to object.
20 I don't see how this witness has been
21 qualified to give opinions as to
22 reputations of companies and
23 individuals.

24 THE COURT: You may certainly

1 respond to the question, based on his
2 own knowledge, if he has any. If he
3 hasn't any, he may say so.

4 MR. RADELL: I'm sorry, Your
5 Honor, I missed that.

6 THE COURT: I indicated that the
7 witness could testify, based on his
8 own knowledge of this subject; but as
9 for his ability to give reputations,
10 generally, in the community, I will
11 agree with Mr. Krebs.

12 MR. RADELL:

13 Q. Okay. Based upon your own knowledge
14 and the experience of LTV's and Jones and
15 Laughlin's doing business with this company
16 over what seems to be a period of years, has
17 this company proved to be a reliable hauler?

18 A. He has been a reliable hauler. We've
19 had no complaints on the service and the
20 methods that he used, none.

21 Q. Are you aware, personally, of any --
22 of any dissatisfaction by anyone else with this
23 hauler? Have you heard any allegations that
24 they really don't do what they are supposed to?

1 A. All of my personal knowledge in
2 dealing with them -- prior to their going out
3 of business or being sold out, I don't quite
4 understand -- I had no complaints, nor did I
5 receive any information to that effect.

6 Q. Okay. Thank you very much.

7 THE COURT: Redirect, Mr. Krebs.

8 R E D I R E C T E X A M I N A T I O N

9 BY MR. KREBS

10 Q. Mr. Broman -- I have to get one of
11 the documents out that's in evidence.

12 MR. KREBS: If I could have,
13 Your Honor, Number 30, Petitioner's
14 Exhibit Number 30.

15 THE COURT: (Tendered).

16 MR. RADELL: Your Honor, I don't
17 believe I admitted any 30.

18 MR. KREBS: I'm sorry, it's
19 marked 21; and it's the one that's
20 marked 30 on the bottom.

21 THE COURT: (Tendered.)

22 MR. KREBS:

23 Q. Mr. Broman, let me hand you what's
24 been marked as the Complainant's Exhibit Number

1 21, a letter to George Smith of Jones and
2 Laughlin Steel, from a Mr. Fenner at U.S. EPA.
3 (Tendered.)

4 Are you familiar with that document?

5 A. Yes. Those were -- that was one of
6 the documents that I was requested to bring.

7 Q. Okay. And does that relate to the
8 F006 waste which you were just asked about in
9 cross-examination?

10 A. Yes.

11 Q. Okay. And that letter is dated on
12 what date?

13 A. Oh, One, December, 1981.

14 Q. Okay. And this -- and is this the
15 letter regarding the delisting of that waste
16 which previously had been called F006?

17 A. Yes.

18 Q. Okay. Even though that letter came
19 out on December 1, 1981, you still went ahead
20 in the State -- report to the State, which is
21 Exhibit Number 26 in front of you, and listed
22 that waste on that report, the F006 waste; is
23 that correct?

24 A. Yes.

1 Q. In 1982. Regarding the Industrial
2 Disposal Company that you were asked questions
3 about on cross-examination, are you familiar
4 with individuals by the name of Ted Peters,
5 Jack Slawbowski and Dan McArtle?

6 A. Yes.

7 Q. And are they related to the company
8 known as Industrial Disposal?

9 A. Yes, they are related to the company.

10 Q. Do you have any knowledge of any of
11 those three individuals also being involved in
12 the use and/or operation of disposal sites
13 which are un-permitted in Lake County,
14 including a site known as the Samochki Site and
15 a site known as a Cliff Rolland Hole?

16 A. The last one I've never heard of;
17 Samochki hole, yes, I've heard of Samochki
18 Hole.

19 Q. What do you know about Samochki Hole?

20 A. Only that I heard some material was
21 taken there, but -- and, again, this is
22 information that I heard -- that none --

23 MR. RADELL: Objection.

24 THE WITNESS:

1 A. -- of our material, other than
2 foundry sand, ever went to that location.

3 THE COURT: Do you have an
4 objection, Mr. Radell?

5 MR. KREBS: Well, I withdraw it,
6 based upon the fact that the Federal
7 Rules don't apply in this proceeding.

8 THE COURT: I can't hear you.

9 MR. RADELL: I had initiated a
10 objection, based upon that being
11 hearsay; but I withdraw the
12 objection, given the fact that the
13 Federal Rules of Evidence do not
14 apply in these proceedings.

15 THE COURT: Continue, Mr. Krebs.

16 MR. KREBS:

17 Q. Okay. So you indicated that the, to
18 the best of your knowledge and the information
19 provided to you in your capacity, that the only
20 thing of Jones and Laughlin at this Samochki
21 Hole would be foundry sand?

22 A. I believe foundry sand, yes.

23 Q. Do you know whether foundry sand is
24 classified as a solid waste in the State of

1 Indiana?

2 A. I believe it's a waste.

3 Q. And do you know whether any of the
4 three individuals that I've mentioned have any
5 relationship to disposing of any waste at the
6 Samochki Hole?

7 A. Only hearsay, really. All I would be
8 saying would be something that I've overheard
9 or that I can't really say that I went there
10 and I know this. I know the three gentlemen,
11 I've been in their company; but other than
12 dealing directly on our material, anything
13 else, it's something that I've heard along the
14 way.

15 Q. Okay. Have any of those three
16 individuals ever told you that they have
17 disposed of waste at the Samochki Hole?

18 A. No.

19 Q. Okay. How do you know -- how did you
20 get information that foundry sand from your
21 company may have been disposed of at Samochki
22 Hole?

23 A. Because I knew that there was some
24 actions going on regarding Samochki Hole. I

1 know there was some discussions going on down
2 in Indianapolis. I know that there was some
3 discussions on foundry sand.

4 We received some inquiries as to our type
5 of foundry sand, as to whether we used certain
6 phenolic resins, which we didn't. And I think
7 they, being Industrial Disposal, were thinking
8 of our foundry sand going there, because it did
9 not have certain phenolic resins. But it's
10 rather fuzzy if any of our material ever went
11 there or not. I know there was some
12 discussions about Samochki Hole.

13 Q. Do you know of another disposal site
14 known as Industrial Cinders Hole?

15 A. Never heard of it.

16 Q. Do you know of any disposal site
17 located on North Clark Road?

18 MR. RADELL: Your Honor, I would
19 object to this, on the basis of being
20 irrelevant. I don't understand how
21 this relates to the current proceed-
22 ings. These are not concerning any
23 allegations concerning either solid
24 waste or facilities other than Gary

1 Development Company. I would ask
2 that either counsel clarify or he
3 withdraw this line of questioning.

4 THE COURT: Mr. Krebs, what's
5 the relevance of this?

6 MR. KREBS: Opposing counsel
7 asked this witness, very
8 specifically, his knowledge and
9 opinion as to the hauler to haul
10 waste; and I'm merely attempting to
11 ask questions related to those
12 questions.

13 MR. RADELL: The witness already
14 testified that he had no such
15 knowledge, when I questioned him
16 originally.

17 THE COURT: I think we could be
18 very brief about this, Mr. Krebs.

19 MR. KREBS: The question was
20 very simple. Does he know of a
21 disposal site on North Clark Road?

22 THE WITNESS:

23 A. I vaguely remember hearing about it;
24 but not -- other than just hearing about it,

1 that's about all I knew.

2 MR. KREBS:

3 Q. Okay. When you heard about it, were
4 you ever told that your company's sludge had
5 gone to that hole?

6 A. Not to my knowledge.

7 Q. Does your company have its own
8 disposal site, as well? Do you have a disposal
9 site that you own, company owned?

10 A. We do not have a disposal site that
11 we own. We have disposal locations in plant.

12 Q. Okay. Areas within the plant
13 facility that you use for disposal?

14 A. Yes.

15 Q. Okay. Does Mr. McArtle, who is with
16 Industrial Disposal, does he operate any of
17 your on-site facilities?

18 A. He -- Mr. McArtle was with Industrial
19 Disposal. They had a contract to maintain one
20 on-site disposal site; then when Industrial
21 Disposal went out of business, he continued as
22 a member of Clark; and he now -- his company
23 does run or manage the one on-site location,
24 yes.

1 MR. KREBS: That's all the
2 questions I have. Thank you.

3 THE COURT: Anything further,
4 Mr. Radell?

5 MR. RADELL: I have no further
6 questions, Your Honor.

7 THE COURT: Thank you very much.
8 You're excused.

9 MR. KREBS: I would like to
10 thank Mr. Broman for being here today
11 and to apologize for the delay on his
12 testimony.

13 THE COURT: Now, Mr. Krebs, do
14 you want to cross-examine or do you
15 want to go to lunch?

16 MR. KREBS: I think this will be
17 a great time to eat. I don't know
18 about anybody else, but it's almost
19 12:30.

20 MR. RADELL: On this, alone, I
21 would agree.

22 THE COURT: I'm sure we'll have
23 some other agreements before the day
24 is over, like the time we adjourn and

1 such other occurrences. We'll take
2 a -- was 40 minutes enough yesterday
3 or were you crammed?

4 MR. KREBS: It was a little
5 tight, I don't know.

6 THE COURT: Okay, let's take an
7 hour. Well, 1:30 we'll be back.

8 (Proceedings recessed for Lunch and Continued)

9 THE COURT: Let's proceed, if
10 everybody is ready. Mr. Cooper,
11 resume the stand, please.

12 C R O S S - E X A M I N A T I O N

13 BY MR. KREBS

14 Q. Mr. Cooper, you stated yesterday, I
15 believe, in giving some of your background,
16 educational and work-wise, as I understand it,
17 you graduated from school in 1971; is that
18 correct?

19 A. Yes, I graduated with a B. S. in
20 Geology.

21 Q. What type of geology was it?

22 A. It was general geology. The Master's
23 program is more specific.

24 Q. And you received your Master's in

1 1984?

2 A. That's right.

3 Q. Did you attend school between those
4 years, 1971 and 1984?

5 A. I took some night school, some
6 calculus and some physics.

7 Q. On your Master's Degree, did you do a
8 Master's thesis?

9 A. Yes, I did.

10 Q. And what was it on?

11 A. It was on Glaciomarine Sedimentation.

12 Q. Glacio --

13 A. Glaciomarine, one word, Sedimentation
14 rates and models for sedimentation in the
15 environment.

16 Q. Is that area related at all to
17 geology in connection with disposal facilities
18 and relationship, or is it just a different
19 area of geology?

20 A. With disposal facilities, did you
21 say?

22 Q. Yes, disposal facilities?

23 A. That's rather a general question. It
24 could be, depends on the environment the

1 disposal facility is located in.

2 Q. Okay. When you say Glaciomarine,
3 does that indicate it's related to water?

4 A. Yes. In the course of the studies,
5 as well as other than the thesis, I had courses
6 on glacio sedimentation on land, as well.

7 Q. Okay. The Glaciomarine
8 Sedimentation, would that, however, be related
9 to -- in connection with sea water or coastal
10 areas?

11 A. Yes.

12 Q. And I believe you stated you were a
13 member of the Geological Society of America?

14 A. That's correct.

15 Q. Do you have any other memberships,
16 such as the Association of Engineering
17 Geologists?

18 A. No.

19 Q. I believe the witness list describes
20 you as being a hydrologist?

21 A. That's correct.

22 Q. As opposed to a geologist. Are not
23 those two different areas?

24 A. The basic courses for which those two

1 classifications have actually -- let me start
2 again. The basic courses for hydrology and
3 geology could be similar. And when
4 applications are submitted to Dayton, Ohio for
5 Region V -- if you want to work for U.S. EPA,
6 Region V -- you submit your applications.
7 Based on those courses, you can classify
8 yourself in environmental science, geology,
9 hydrology; and those are just EPA
10 classifications. In that case, I was hired
11 under that title that you've stated.

12 Q. Okay. So your background,
13 educational-wise is geology; but EPA has you
14 classified as a hydrologist.

15 A. That's the title of which I was
16 hired; but, basically, I was hired as a
17 geologist.

18 Q. Individuals in -- that are actually
19 hydrologist, would you agree that most of those
20 individuals are trained in the area of civil
21 engineering, as opposed to just geology?

22 A. I wouldn't agree with that.

23 Q. You would not?

24 A. It may be the case; but there are

1 cases in groundwater flow that can be taken at
2 most colleges where geology courses are
3 offered. It's not necessary to take civil
4 engineering.

5 Q. You were discussing yesterday that
6 the landfill was approximately 62 acres, etc.
7 Now, can you give us the approximate dimensions
8 of the site?

9 A. I don't know what they are.

10 Q. Okay.

11 A. I expect if 62 acres -- you could
12 figure it out, but I'm not familiar with the
13 dimensions.

14 Q. Do you know what percentage of the
15 fill area capacity of the landfill has been
16 utilized today?

17 A. I believe Mr. Hagen stated that it
18 was approximately 75 percent, if my memory
19 serves me correct.

20 Q. We were discussing yesterday, I
21 believe you said, that you felt the landfill
22 extended 60 to 80 feet below the grade of the
23 original ground surface. Is that basically
24 what your testimony was?

1 A. If that was said yesterday, I have no
2 way of knowing for sure, except I know that the
3 sand goes down about 35 feet. Mr. Hagen has
4 indicated he has taken -- he has excavated into
5 the clay and uses that for cover and for the
6 walls, clay perimeters; and I know it goes into
7 some depth, so that was a guess.

8 Q. Okay. So, your guess was that he
9 excavated down into the clay, then, somewhere
10 in the vicinity of, what, 30 to 50 feet, after
11 you get through the 35 feet of sand?

12 A. That was my estimate.

13 Q. Do you know how thick the clay
14 material or clay layer, let's call it, is
15 underneath the landfill?

16 A. The reports I have seen --

17 Q. Before you get to bedrock.

18 A. The reports I had seen indicate about
19 approximately 80 feet.

20 Q. Eighty feet. What reports are you
21 relying upon?

22 A. I'm relying upon the Harding and
23 Lawson report in 1984.

24 Q. Is that the one that was placed into

1 evidence?

2 A. Yes, it is.

3 Q. On groundwater monitoring?

4 A. Yes, it is. I believe that's where
5 those figures come from.

6 Q. In analyzing the site and as you
7 have, would you agree that the depth, the
8 thickness of that clay material is an important
9 factor as -- especially as to potential
10 groundwater problems?

11 A. The clay, you mean, below the sand?
12 That clay would have a factor -- be a factor in
13 vertical migration of the groundwater, yes.

14 Q. Your calculations, if you look at the
15 two things together, let's assume -- let's
16 assume that you're correct and there's normally
17 80 feet of clay material under the sand and
18 let's assume you're correct and that the
19 excavation has extended down 80 feet, that
20 would leave no clay barrier at all; would it?

21 A. If my calculations are right, but it
22 would still leave -- if you had 35 feet of
23 sand, you got under 45 feet into the clay and
24 you still have 35 feet of clay; is that

1 correct, I believe that is?

2 Q. Okay. You're figuring 35 feet of
3 sand, then you're saying the clay layer was 80
4 feet? I thought you said you thought he went
5 down 68 to 80 feet into the clay, or are you
6 including that?

7 A. No, I'm including from the original
8 ground surface.

9 Q. Okay.

10 A. Yes, so that would be -- if that
11 estimation is correct -- and I'm not standing
12 by that -- I don't know, 60, 80 feet was a
13 guess. From the ground surface, if you have 35
14 feet of sand, you get at most and under my
15 estimation at least 35 feet of clay; and I
16 don't imagine it was that deep that he's gone
17 into the clay.

18 Q. Okay. So your high figure, you say,
19 would be 45 feet into the clay?

20 A. That's correct.

21 Q. Which would still leave about 35
22 feet, if it was 80 feet?

23 A. That's correct.

24 Q. I believe you indicated that you felt

1 the landfill was also 20 feet high, above the
2 ground surface?

3 A. I don't recall giving a figure, but I
4 know that the landfill is, a portion of it is,
5 according to Mr. Hagen, is at whatever the
6 permitted elevation above the surrounding
7 natural elevation is; it is quite high. I
8 would think 20 feet would be a good estimate,
9 maybe even lower than what actually is there.

10 Q. So it may be higher?

11 A. Possibly.

12 Q. Much higher?

13 A. Not much higher.

14 Q. Slightly higher?

15 A. Slightly.

16 Q. You spent quite a bit of time
17 yesterday -- I think you and perhaps Mr. Warner
18 also -- there were discussions on monitoring of
19 wells, etc., and the present monitoring that's
20 been going on with monitoring wells at Gary
21 Development versus RCRA monitoring. And in
22 connection with that area, can you tell me what
23 specific parameters the State of Indiana
24 requires to monitor, then, the solid waste

1 landfill regulations, as opposed to the RCRA
2 Regulations?

3 A. Yes. I'm not that familiar with that
4 program. That's regulations that I don't use.
5 I know that PH is one of those that is included
6 in those six or seven parameters. I'm not sure
7 what the others are.

8 Q. Are you familiar with landfill
9 leachate, in general, leachate from landfill?

10 A. Only by definition.

11 Q. Have you ever reviewed -- have you
12 ever reviewed documents of leachate samples
13 from landfills and monitoring wells?

14 A. Have I ever reviewed documents of
15 samples from leachate and monitoring wells?

16 Q. Documents from leachate samples that
17 may have been pulled for monitoring wells or
18 from receipts at a landfill?

19 A. I've reviewed documents about samples
20 that have contained hazardous waste, and I
21 imagine that I would classify that as
22 contaminated groundwater, because it could fall
23 under that category with leachate. It's not
24 referred to that, it's usually referred to as

1 water which is contaminated.

2 Q. When did you say you began work at
3 EPA?

4 A. September of 1985.

5 Q. September of '85?

6 A. That's correct.

7 Q. And I believe you testified you had a
8 geological job with a geotech firm for six
9 months, also?

10 A. That's correct.

11 Q. And when was that?

12 A. Immediately preceding that.

13 Q. Okay. And I think you said you were
14 doing what, some kind of a nuclear density
15 meter?

16 A. Yes, I was testing by the nuclear
17 density gauge the density of compacted clays at
18 construction sites.

19 Q. Is that like for compaction such as
20 when you build highways?

21 A. Correct.

22 Q. Or building foundation, that type of
23 thing, to determine the compaction of
24 materials?

1 A. That's correct.

2 Q. What did you do, prior to being with
3 the geotech firm? I guess that would be
4 basically in 1985, also, correct?

5 A. Yes. The first quarter or the first
6 half of 1985, I was teaching for the three
7 quarters or three semesters, excuse me. Even
8 while I was finishing up my Master's Degree, I
9 was teaching geology, geography and environ-
10 mental geography, three separate courses, at a
11 community college.

12 Q. In Chicago?

13 A. In Elgin, Illinois.

14 Q. In Elgin, Illinois. For three
15 semesters, did you say?

16 A. Yes.

17 Q. Okay. What type of employment would
18 you have, though, before 1985?

19 A. Well, I was in graduate school as a
20 teaching assistant for three years prior to
21 that -- or two years prior, the two years
22 before I began teaching at Elgin. My first
23 year or two out of college in '72 to '73, I
24 worked in a machine shop, at which I worked my

1 way through school; and I continued to work
2 there. And for eight years I worked for the
3 U.S. Post Office.

4 Q. What did you do for the Post Office?

5 A. The fork handler and a letter
6 carrier.

7 Q. Then you went back to school, would
8 that be what you did, you went back to school?

9 A. Yeah, I went to night school during
10 the end of that, those years at the Post
11 Office, to graduate school, full-time.

12 Q. You indicated that your job
13 responsibility presently with EPA, having
14 started there in late '85, it would require you
15 to oversee state activity. Can you tell us
16 what activities you were overseeing --

17 A. Sure.

18 Q. -- what types of activities?

19 A. Occasionally, we will go out on
20 inspections, as we did with Gary Development on
21 August 27th. I accompanied Mr. Warner to the
22 site, listened to what's being asked and what
23 is being recorded, attest to questions that are
24 appropriate, whether the inspector is doing the

1 job correctly, record these observations and
2 fill out some forms. That's one aspects of it.

3 Another aspect is to, at least on a semi
4 annual, sometimes a quarterly basis, go down to
5 the facilities or to the Indiana Department of
6 Environmental Management or, in my case, to
7 another authorized state in Illinois; go down
8 to the offices and review files there, look for
9 specific things and to determine how the
10 program is operating.

11 Q. So, you're kind of reviewing the
12 State's program, what their activities are,
13 basically?

14 A. That's a small part of my job.

15 Q. Okay.

16 A. Less than 10 percent.

17 Q. What's the other 90 percent?

18 A. Rating compliance orders and
19 following up on enforcement activities.

20 Q. Okay. Did you author the complaint
21 in this case?

22 A. Yes, I did.

23 Q. Did anybody work with you in putting
24 the complaint together, other than yourself?

1 A. I put the original draft together.
2 It goes through my supervisor, through his
3 supervisor; it goes through the Office of
4 Regional Counsel, the Office of Regional
5 Counsel Supervisor, perhaps. It goes through a
6 chain of people twice, comments are added along
7 the way; and those changes are incorporated
8 sometimes in the final document.

9 Q. Okay. Were there any, to your
10 recollection, substantial changes in the
11 complaint, between the time you drafted it and
12 it was finalized?

13 MR. RADELL: Your Honor, since
14 Mr. Cooper testified that this went
15 to Office of Regional Counsel, his
16 attorney, I would request that any
17 changes made or suggested by the
18 attorneys not be answered; because
19 that's subject to the attorney/client
20 privilege.

21 THE COURT: But Mr. Peterson --
22 Mr. Cooper isn't an attorney.

23 MR. RADELL: But he's my client
24 and I'm his attorney, and any changes

1 made to that would have been by me.

2 THE COURT: You would have made
3 any changes?

4 MR. RADELL: I would have
5 possibly made some changes or other
6 attorneys in the office, of whom he
7 would be the client, would have
8 suggested changes to the complaint;
9 and those changes would be subject to
10 the attorney/client privilege.

11 THE COURT:

12 Q. Mr. Cooper, did you testify that it
13 did go to the Office of Regional Counsel or it
14 may have?

15 A. Oh, it did; it's standard procedure.
16 It leaves our office; and the attorneys
17 assigned to the case, he reviews the document
18 or she reviews the document, twice, before it
19 is sent out.

20 THE COURT: Well, all right.
21 Counsel may inquire about changes not
22 brought by the Office of Regional
23 Counsel.

24 THE WITNESS:

1 A. The only change that I'm aware of,
2 that I can remember at this stage in this case,
3 is what we've already discussed on the
4 reduction of the penalty in the original
5 amount, and I stated that this morning.

6 MR. KREBS:

7 Q. I believe you indicated that this
8 matter was referred to you in October of '85,
9 is that correct?

10 A. October 22nd, I believe, yes.

11 Q. Was the referral made to you by the
12 Technical Secretary of the Indiana
13 Environmental Management Board?

14 A. It came from Indiana State Board of
15 Health. I don't know, more specifically than
16 that, whose signature was on it.

17 Q. Okay. You don't have any referral
18 document where the case was referred to you?

19 A. I do, but I don't recall what the
20 letter date is and whose signature was on it.

21 Q. You recall the specific date, though,
22 right? You know the date?

23 A. Yes, I do, because we've gone over
24 that yesterday in the letter, when we notified

1 the State; the date is on that document, as I
2 recall it.

3 Q. But you don't know who referred it to
4 you, other than somebody at the State Board of
5 Health?

6 A. That's correct.

7 Q. Complainant's Exhibit Number 14, the
8 document which I believe was sponsored in your
9 testimony, indicates there was a letter giving
10 the State notice that EPA was going to bring
11 this action and was addressed to a David Lamm
12 of Land Pollution Control Division of Indiana
13 State Board of Health. Do you know whether
14 Mr. Lamm actually received that letter?

15 A. I can't say if he's ever seen it.
16 I'm sure it went to his office.

17 Q. It shows it was sent to him, that's
18 who it was addressed to correct?

19 A. That's correct.

20 Q. As far as whether he received it, you
21 don't know whether he actually received it?

22 Did you have it sent certified copy, get a
23 receipt, Certified Registered Mail?

24 A. If it did, it would state it on the

1 letter. I don't have a copy in front of me to
2 check.

3 THE COURT: (Tendered).

4 THE WITNESS:

5 A. It would appear, if it would have
6 been Certified Mail.

7 MR. KREBS:

8 Q. It did not?

9 A. I couldn't swear to that, but it
10 would appear that it did not.

11 Q. On that exhibit that you now have in
12 front of you, does it show anywhere on there
13 that it was received by Mr. Lamm of State Board
14 of Health? Was there a file mark on it, or
15 anything that indicates that it was received by
16 him?

17 A. No, this is just our copy of it.

18 Q. Okay. You were discussing yesterday
19 the notice which you said was due by August
20 18th, 1980. Do you recall that testimony, that
21 area of your testimony?

22 A. Yes, I do.

23 Q. And what do you call that notice,
24 again?

1 A. Notification of Hazardous Waste
2 Activity.

3 Q. If a facility had not, as of August
4 18th, 1980, taken RCRA hazardous waste, would
5 they file a Notice of Hazardous Waste Activity,
6 if they had none?

7 A. If they intended to take it after
8 that date, then it would have been required to
9 have filed it. If they thought in the future
10 they might take any hazardous waste, they would
11 have or should have filed that.

12 Q. They file if they think they might
13 take hazardous waste, have hazardous waste
14 activity?

15 A. Would you repeat that?

16 Q. Yeah. They are filing a Notice of
17 Hazardous Waste Activity, and you're saying
18 they have to file that on August 18th, 1980.
19 Are you telling me that people had filed that
20 form, when they didn't have any hazardous waste
21 activity as of August 18th, 1980?

22 A. You are asking me?

23 Q. I mean, wouldn't that be a misrepre-
24 sentation on the form, if I turn a form in that

1 said I'm in the business of hazardous waste
2 activity on August 18th, 1980, and I wasn't?

3 THE COURT: Mr. Krebs, we need
4 to be sure that the witness under-
5 stands the question. You were asking
6 him whether somebody would file this
7 form, even though they had no
8 hazardous waste.

9 MR. KREBS:

10 Q. And his response was they may have,
11 if they thought they were going to?

12 A. Exactly. If they wanted to have
13 hazardous waste activity in the future, that
14 was the deadline to notify EPA that they were
15 going to, intending or might intend to conduct
16 some hazardous waste activity.

17 Q. What if they didn't decide they were
18 going to do that until November 18th, 1980, and
19 filed their Part A on November 18th, 1980, if
20 they decided that day?

21 A. It was too late. The rules were that
22 was the deadline. If they didn't do it by that
23 date, there were other rules that would apply.
24 They would have to have a finally effective

1 RCRA permit issued to them, before they begin
2 to conduct hazardous waste activity.

3 Q. Does the notice form you're talking
4 about have any area on the form which discusses
5 waste presently being taken, or is that just in
6 the Part A application or would it describe any
7 kind of waste which may have been or might be
8 taken?

9 A. My recollection is the notifications
10 do not have or does not necessarily have what
11 waste you're going to handle. The Part A
12 certainly does have that and, thus, also has a
13 spot for filling in what type of hazardous
14 waste activity. But that's my best
15 recollection.

16 Q. Well, what does the notice form have
17 on them? Does it just say we're going to be in
18 the hazardous waste business and the signature
19 space?

20 A. How much hazardous waste they're
21 going to -- quantities, perhaps, per year; what
22 type of activity are you going to -- are you
23 going to be a generator, transporter or
24 treater; do you have an underground ejection

1 well; are you a transporter; are you going to
2 be in landfill or whatever.

3 Q. Isn't that the same information
4 that's called for on Part A application?

5 A. A lot of it's duplicative.

6 Q. Can you tell us what there is
7 different, as far as the information that a
8 facility gives you, different from the notice
9 which you say is due on August 18th, 1980, and
10 Part A application?

11 A. Would you repeat that.

12 Q. Yeah. What is the difference between
13 them? Is there any information that is called
14 for on one -- is there any information called
15 for on the form, that you said should have been
16 filed by August 18th, 1980, that is something
17 more than what is in the Part A application
18 form?

19 A. It's my belief or my understanding,
20 from my recollection, that Part A expands on
21 what is notified as the hazardous waste
22 activity intended by the facility. That's as
23 much as I can state.

24 Q. Right. It expands upon what would

1 have been in the notice of August 18th, 1980,
2 Part A?

3 A. Correct. There may be other things,
4 as well, but I can't recall.

5 Q. In going through the three things
6 that you said the regulations require for
7 interim status, that was one of them, the
8 August 18th of 1980 notice that you believe was
9 required.

10 The second thing, you said the facility
11 must be in existence by November 18th, 1980.
12 What is your definition of being in existence?

13 A. It would have had to have been
14 operating -- it couldn't be a new facility.
15 The word new facility would refer to facilities
16 beginning in operation and after that date.

17 Q. In order to be in existence, would a
18 facility have had to actually dispose of RCRA
19 waste prior to November 18th, 1980 or just be
20 ready to dispose of those?

21 A. It's my understanding that the -- if
22 the notification of Part A were filed and the
23 place would have been in existence before the
24 dates specified, that facility would have

1 interim status. Whether or not it had begun
2 disposing of hazardous waste handling or
3 hazardous waste, it would still have interim
4 status to do that sometime in the future.

5 Q. Even though it hadn't disposed of
6 anything on that date?

7 A. That's my understanding.

8 Q. As long as it was in existence,
9 physically sitting there?

10 A. Yes.

11 Q. I need you to look at Exhibit A --
12 Exhibit One, I believe. Here, discussing some
13 things on Exhibit One, and one item you were
14 looking at was the wastes that are listed on
15 the third page and there were four of them, I
16 believe, that you discussed; and those would be
17 under Column A; is that correct?

18 A. That's correct.

19 Q. Okay. And that's the F006, K -- ?

20 A. -- 087.

21 Q. -- 087, F005 and F003. And then the
22 next column, Column B, it says estimated annual
23 quantity of waste, is that correct, and then
24 there's numbers listed there?

1 A. Yes.

2 Q. Do you know what type of measurement
3 this is?

4 A. That's indicated in C. With A here,
5 you go back a page or two, there's -- or maybe
6 here (indicating).

7 Q. A?

8 A. Acre feet, I believe it is.

9 Q. Acre feet. What's an acre feet or an
10 acre foot -- no, it's an acre feet, isn't it?
11 Not very good English.

12 A. I believe it means that if you were
13 to cover one acre with one foot of material,
14 that would be an acre foot.

15 Q. You take one acre and dispose of one
16 foot of material in depth, I guess?

17 A. Yes.

18 Q. That's an acre feet?

19 A. That's my understanding, yes.

20 Q. Okay.

21 A. That's an acre foot, but this is an
22 estimate of how many acre feet he would have
23 available.

24 Q. If a facility puts on a Part A

1 application a particular quantity, where it
2 says estimated annual quantity of waste, can it
3 take more than the amounts they estimated of
4 those particular wastes?

5 A. I don't think there's any problem
6 with that.

7 Q. Can they take less?

8 A. It's just, as I say, it's an
9 estimation.

10 Q. If a facility does not list a type of
11 waste, can they take something that's not
12 listed on this Part A application?

13 A. The procedure is to amend the Part A
14 application with a new submittal, stating what
15 it is they're going to be adding at the
16 facility --

17 Q. Okay.

18 A. -- what type of activity, what type
19 of waste you'll be handling, estimated
20 quantities.

21 MR. RADELL: Your Honor, I would
22 ask Mr. Krebs, in asking Mr. Cooper
23 these questions, to specify. When he
24 says a facility could take that

1 waste, does he mean a facility
2 operating under interim status, that
3 has submitted the proper
4 identification? Does he mean a
5 facility that has been granted a
6 permit, based upon this application?
7 I would also wonder whether
8 Mr. Cooper can testify about
9 permitted facilities.

10 MR. KREBS: Your Honor, there's
11 no question pending. The witness
12 already answered the question.
13 Counsel just wants to do cross-
14 examination at this time. If he
15 wants to delve into more detail into
16 the responses his witness indicates,
17 he has the right to do that on
18 redirect.

19 THE COURT: Mr. Radell, any
20 objections that you may have, I'll
21 ask that you make them timely;
22 because the cat is already out of the
23 bag on this.

24 MR. RADELL: Well, my under-

1 standing was that he had a question
2 pending and he was waiting for
3 Mr. Cooper's response.

4 MR. KREBS: I don't think so.
5 Was there a question pending,
6 Miss Court Reporter?

7 THE COURT: Maybe we'd better
8 here it again. What's the question
9 again, please?

10 MR. KREBS: Do you have it
11 there? Would you read it back?

12 (Court Reporter Reads Question and Answer)

13 MR. KREBS: Thank you.

14 Q. So, you were indicating that -- that
15 the process is for one to add different waste
16 streams, let's call them, that are not
17 specified by number in a Part A, and to, in
18 essence, file an Amended Part A application?

19 A. That's right.

20 Q. So, that really seeks interim status,
21 but also for a different type of disposal or a
22 disposal of a different type of waste?

23 A. It only adds to the facility that
24 already has interim status. It adds another

1 waste stream and perhaps another process code.

2 Q. Okay. Isn't it common -- was it not
3 common for facilities filing Part A's in
4 November of 1980, for many of them to list on
5 their Part A applications wastes, not only
6 estimated in volumes but projections of what
7 they might take, even though they may not have
8 been taking them on that date?

9 A. Sure, that was estimated, if they
10 might take it in the future, sure.

11 Q. Okay. Would you agree that the fact
12 that someone put a specific type of waste
13 listing on a Part A application, by itself,
14 doesn't mean that they took that waste?

15 A. Yes.

16 Q. In your work at EPA, have you ever
17 come across situations where people have
18 mis-identified RCRA waste and given it the
19 wrong classification, put the wrong number down
20 on a particular waste stream?

21 A. The only one that comes to mind is
22 American Chemical Services at this point.

23 Q. That's the only one that you're
24 familiar with?

1 A. That readily comes to mind, yes.

2 Q. How many listings are there for
3 waste, hazardous waste, the numbers that you've
4 been talking about and talked about in several
5 instances, F006? How many of those kind of
6 numbers are there?

7 A. They've never told it. I imagine
8 there are a hundred or more.

9 Q. You mentioned American Chemical in
10 your response on Complainant's Exhibit Number
11 22. Perhaps you -- it would be appropriate for
12 you to take a look at it, before I can ask you
13 to answer the question. (Tendered).

14 In the first paragraph, about two-thirds
15 of the way down, do you see where in this
16 letter written to you that American Chemical
17 said, "These solvent mixtures would have
18 generated D001 wastes, not F005 wastes. It is
19 not possible to determine the hazard
20 classification of a solid containing solvent
21 mixture"?

22 A. It does state that, yes.

23 Q. Okay. Is that kind of what you're
24 referring to, that American Chemical -- if you

1 have a recollection of American Chemical -- may
2 have or has alleged that they have mis-marked
3 waste, mis-identified waste?

4 A. That's what I was referring to.

5 Q. Okay. What is the difference between
6 D001 and F005?

7 A. F005 is ignitable and toxic, based
8 upon the constituents found in that particular
9 listed waste; and, again, I stress listed
10 waste. The other waste, D001, is an ignitable
11 waste, listed for ignitability only as a
12 characteristic waste, as opposed to a listed
13 waste.

14 Q. Now, that's the difference between a
15 listed waste and a characteristic waste?

16 A. A listed waste is a listed waste
17 until it is delisted. If it's mixed with
18 something, it is still a listed waste. An
19 ignitable -- if there is only ignitable and has
20 the designation D001, perhaps, if that was its
21 only characteristic and, in fact, that was a
22 correct classification, then if it was made to
23 be non-ignitable, it would be non-hazardous
24 waste. However, with F005, it is toxic and

1 ignitable. Toxicity does not go away, just by
2 mixing, as in this case, some type of sand
3 material with it.

4 Q. Okay. So the classification of the
5 waste of D001, you've indicated, is by
6 characteristics; and that would just simply
7 mean that the waste is something that is
8 ignitable, period?

9 A. That's right.

10 Q. And you're saying that can go away
11 under certain circumstances, if it's made no
12 longer ignitable?

13 A. Of course, the -- I think if you read
14 the regulations for D001, you'll find that it
15 must be ignitable and not fit into any of the
16 other categories. If it has constituents that
17 were classified as some other waste, then it
18 would fall into that more specific waste and
19 not the general term of just being ignitable.

20 Q. Okay. Mr. Cooper, were you aware,
21 regarding Gary Development and American
22 Chemical Services, that a Mr. Guinn Doyle of
23 the Indiana State Board of Health, as the Chief
24 of this Hazardous Waste Management Branch, sent

1 a letter in July of 1985 to American Chemical
2 Services, requesting that American Chemical
3 provide it with information as to shipments of
4 any RCRA waste to Gary Development?

5 A. Yes, I'm aware of that.

6 Q. I would like to hand you a document
7 which is not numbered --

8 MR. KREBS: How do you want for
9 me to number my documents?

10 THE COURT: By number.

11 MR. KREBS: By number, also?

12 THE COURT: (Nodding, yes).

13 MR. KREBS:

14 Q. I hand you what's been marked for
15 identification purposes only as Respondent's
16 Exhibit One, and on the second page of that
17 particular document --

18 MR. RADELL: May I see a copy of
19 the document, please?

20 MR. KREBS: I haven't offered it
21 yet. I may not.

22 Q. -- the second page of that document,
23 is that a letter that you're familiar with?

24 A. Yes.

1 Q. Okay. And is this what you're
2 referring to in your last response about
3 Mr. Doyle's request?

4 A. Yes, this is what I was referring to.

5 MR. KREBS: At this time we
6 would offer into evidence
7 Respondent's Exhibit One, as
8 identified by this witness as being a
9 letter from the Chief of the
10 Hazardous Waste Management Branch of
11 the Indiana State Board of Health to
12 American Chemical Services, Inc.,
13 dated July 1, 1985; entitled Request
14 for Information Waste Disposal at
15 Gary Development Company, Inc.

16 this letter, Your Honor,
17 contains on the front of it a
18 Certification and Attestation of
19 Copies of Official Records, by Thomas
20 L. Russell as the Hazardous Waste
21 Management Branch Chief of the
22 Department of Environmental
23 Management, which is notarized and
24 dated August 18th, 1987, as being an

1 official document in the public
2 records of this State Agency.

3 MR. RADELL: I have no
4 objections to the submission.

5 THE COURT: Number One is
6 received from Respondent.

7 (Respondent's Exhibit No. One is Admitted)

8 MR. KREBS:

9 Q. Are you familiar with American
10 Chemical's response to Mr. Doyle?

11 A. I don't recall the cover letter. I
12 remember seeing the manifests with the F005
13 listing on it. I'm sure I've seen the letter.

14 (Reporter Marks Respondent's Exhibit No. 2)

15 MR. KREBS:

16 Q. Let me hand you what I've marked for
17 identification purposes only, just for the
18 record, as Respondent's Exhibit Two; and ask
19 you if you've ever read that letter previously?

20 A. Yes, I've read this.

21 Q. Okay. Is that what you're referring
22 to as the cover letter on documents sent by
23 American Chemical to Mr. Doyle, in response to
24 his request letter which is now Respondent's

1 Exhibit One?

2 A. Yes.

3 Q. How did you come to read a copy of
4 this letter? Mr. Doyle sent this to you?

5 A. It was sent to us by Indiana State
6 Board of Health, or I believe that's the
7 letterhead that came on it.

8 Q. Okay. Now, what position did
9 American Chemical take as to waste it allegedly
10 shipped, the 33 loads to Gary Development?

11 A. Could you explain that?

12 Q. What position did they take?

13 A. They said there was an inaccurate
14 statement as to the hazardous waste, EPA
15 Hazardous Waste Number. F005 should have been
16 D001.

17 Q. Basically, the same statements
18 contained in the letter to you that was
19 admitted into evidence?

20 A. Yes.

21 MR. KREBS: I think I might as
22 well go ahead and offer this. I
23 didn't have extra copies, and I was
24 going to hold off offering it because

1 of that.

2 MR. RADELL: I have a copy.

3 MR. KREBS: Okay, they have one.

4 So I would offer into evidence
5 Respondent's Exhibit Two, being the
6 letter which we have shown this
7 witness and he has identified as
8 having received it from the Indiana
9 State Board of Health.

10 MR. RADELL: I have no
11 objection.

12 THE COURT: All right.

13 Respondent's Two is received.

14 (Respondent's Exhibit No. 2 is Admitted)

15 MR. KREBS:

16 Q. The question I omitted asking you
17 regarding the Part A application -- any Part A
18 application, not just this particular Part A --
19 does the application limit the generator from
20 whom waste listed on a part amount can be taken
21 from?

22 A. It doesn't, as long as the generator
23 has a U.S. EPA ID Number.

24 Q. Okay.

1 A. And has status to operate as a
2 hazardous waste facility.

3 Q. So, if I, as a facility, would list
4 F006, estimated quantity, I could take more or
5 less than the estimated quantity; I could take
6 none of it at all; and then I could take it, if
7 it's F006 and the generator has an EPA ID
8 Number; I could take it from any -- the
9 generator of F006?

10 MR. RADELL: I have this
11 objection I raised earlier in an
12 untimely fashion, concerning that he
13 said I would be able to. It doesn't
14 mean -- is he saying that they have
15 interim status or they have a permit
16 based upon this Part A application?

17 MR. KREBS: This would be a
18 facility with interim status, sure,
19 you know, for the assumption I'm
20 making.

21 THE WITNESS:

22 A. Well, I think I've lost the train of
23 thought now. Would you please repeat it?

24 MR. KREBS:

1 Q. Assume that we have a facility that
2 has interim status, assume that this facility
3 has filed it's Part A application. I think
4 what you're saying is that as to the waste
5 stream they've listed by number, they could
6 take any of the numbers of wastes they listed,
7 they could really take any volume of the
8 material, even though they put down an
9 estimate; they could take more or less than the
10 estimate or they could take none of that waste;
11 and they could take it from any generator who
12 generated that type waste, as identified, as
13 long as the generator had an EPA ID Number?

14 A. Yes, and the transporter, as well.

15 Q. And the transporter?

16 A. Yes.

17 Q. Yesterday you discussed that if a
18 facility had interim status, it terminated, if
19 there was no certification by November, 1985, I
20 believe, of compliance with groundwater
21 monitoring and financial assurance and if no --
22 unless a Part B had been submitted. Was that
23 basically your statement?

24 A. Yes. Those three things had to be

1 done. They had to have submitted the Part B of
2 the permit application; they had, by November
3 8th, 1985, they would have had to have
4 certified that the groundwater system in place
5 was in compliance with the RCRA groundwater
6 monitoring; and they would have had to have
7 provided financial assurance for closure and
8 financial liability coverage.

9 Q. As to the Gary Development, it's
10 EPA's position, is it not, that they never had
11 interim status?

12 A. That's correct.

13 Q. So, there would be no interim status
14 to terminate. You can't terminate something
15 that doesn't exist, correct?

16 A. But all of the same regulations for
17 facilities losing their status apply also to
18 those who should have had interim status but
19 did not have interim status, as of November
20 8th, 1985.

21 Q. Are you suggesting that Gary
22 Development should have had interim status?

23 A. They accepted hazardous waste after
24 November -- or after November 19th, 1980.

1 Q. Okay.

2 A. The facility that handled hazardous
3 waste, disposes of hazardous waste, was
4 operating without interim status.

5 Q. And they filed a -- they timely filed
6 a Part A. And you believe they took RCRA
7 hazardous waste; and EPA held they don't have
8 interim status, but they should have had
9 interim status, is that correct?

10 A. Yes.

11 Q. Isn't that a catch-22? They should
12 have had interim status, but EPA determined
13 that they didn't have, even though they filed a
14 Part A. So, therefore they've taken waste,
15 illegally?

16 MR. RADELL: Objection. I don't
17 know whether the witness is competent
18 to testify as to these conclusions of
19 law, as to whether it is a catch-22,
20 as far as the Agency goes. I think
21 that really gets into legislative
22 intent and the background of the
23 statute.

24 MR. KREBS: Your Honor, it's not

1 legislative intent. It's sitting
2 here in these documents that they've
3 put into evidence.

4 THE COURT: I believe the
5 question is proper. If the witness
6 understands it, he may answer.

7 THE WITNESS:

8 A. Would you repeat the question,
9 please?

10 MR. KREBS:

11 Q. The question is, isn't this putting a
12 facility in a catch-22 position, where they
13 can't win for losing. If they file Part A
14 application, you believe that they took RCRA
15 waste after November 18th, 1980; the Government
16 says we're not going to recognize their interim
17 status, and then they're going to say that
18 you've violated the law by taking RCRA waste
19 without interim status; then you're saying, on
20 the other hand, that you should have had
21 interim status. Doesn't that put a facility in
22 a position where they can't win, no matter what
23 they do?

24 A. The deadlines are written into the

1 statute. The Congress intended those deadlines
2 to be there; and included that facilities, in
3 order to handle hazardous waste, should have
4 either gotten their applications for Part A
5 application for notification in by the date
6 specified or they should not have handled
7 hazardous waste. And if they did handle
8 hazardous waste, they are subject to the
9 regulations of the Resource Conservation
10 Recovery Act of 1976.

11 Q. Isn't it true that many interim
12 status facilities failed to file, by August
13 18th of 1980, that notice document; and that
14 EPA in many cases waived the time period on
15 filing that?

16 A. I'm not familiar with any cases like
17 that. However, I can say that in some cases,
18 facilities were issued a complaint and could
19 operate, if a complaint had been filed against
20 them. But I really can't speak to that of
21 personal experience.

22 MR. KREBS: I believe this
23 document is already into evidence,
24 but I don't recall what the number

1 is. Are you sure this isn't in;
2 because I don't want to offer it, if
3 it's already in the record once? If
4 I can take a moment so I can
5 determine whether it is. This is my
6 copy. I seem to recall it was -- it
7 would have been yesterday.

8 MR. RADELL: This is the one the
9 Judge did not allow in because of
10 legibility? What a happy coinci-
11 dence.

12 THE COURT: No wonder we don't
13 have it.

14 MR. KREBS: Mine is better than
15 yours.

16 Q. Let me hand you what we've marked for
17 identification purposes Respondent's Exhibit
18 Number Three, and ask you if that's a letter
19 which you looked at yesterday, a different copy
20 of it, and answered questions on it?

21 A. Yes, it is.

22 Q. Okay. And this letter is from whom
23 to whom?

24 A. This is from Mr. Miner, Chief of the

1 Technical Programs Compliance Section of U.S.
2 EPA in Chicago.

3 Q. And what's the date of it, please?

4 A. It's dated June 18th, 1982, and it's
5 sent to Mr. Hagen of Gary Development.

6 Q. And this one has EPA's letterhead at
7 the top of it, right?

8 A. That's correct.

9 Q. And does it have a photostatic copy
10 of the signature on it, and you can tell it's
11 been signed?

12 A. Yes.

13 Q. Okay.

14 MR. KREBS: We would offer into
15 evidence Respondent's Three.

16 MR. RADELL: I have no
17 objection.

18 (Respondent's Exhibit No. 3 is Admitted)

19 MR. KREBS:

20 Q. Would it be correct that in this
21 letter which was discussed yesterday, that
22 Mr. Miner said that U.S. EPA recognized that
23 many facilities may have failed to submit or be
24 timely with their notifications, due to a

1 variety of reasons regarding the August 18th,
2 1980 notice?

3 A. That's what it states in the letter,
4 yes.

5 Q. And he also says, therefore, a policy
6 was established by which the Agency may
7 exercise discretion in allowing those
8 facilities to continue to operate under a
9 compliance order?

10 A. Correct.

11 Q. But in this case as to Gary
12 Development, Region V determined not to
13 exercise their discretion, not to let them file
14 late the notice; and then to accuse them of
15 accepting hazardous waste, illegally and
16 without interim status, even though they had
17 timely filed a Part A?

18 A. Appears that way. I'm not familiar
19 with the reasons associated with that decision.

20 Q. A letter that was admitted today,
21 which I believe is Complainant's Number Three,
22 which is the one I think they -- yeah, the
23 yellow copy. I hand you that, if I could.
24 This also was the letter that you've testified

1 you're familiar with. (Tendered.)

2 A. Yes.

3 Q. I would like you to turn to page two;
4 and in the third paragraph on that page, do you
5 see, midway through, where it says because of
6 the landfill's repeated ratings of unacceptable
7 operation, quote-unquote, in State inspections,
8 its locations in the Grand Calumet River
9 floodplains and the actual quantity and nature
10 of American Chemical Service waste disposed of,
11 we believe that proper closure will involve a
12 design with numerous protective measures?

13 A. Yes, that's stated there.

14 Q. Can you see in the next sentence,
15 where Mr. Klepitsch, I think it is, in the next
16 paragraph, first sentence, says, "We have
17 considered the above factors, plus the Agreed
18 Order reached between the Environmental
19 Management Board and Gary Development in early
20 1983, and have concluded that it is not in the
21 public interest for Gary Development Landfill
22 to be issued an interim status compliance
23 letter for continued hazardous waste operation?

24 A. Yes, I see that.

1 Q. Okay. You indicated previously that
2 you weren't aware of why the Agency decided not
3 to exercise its discretion, and as it did with
4 many other sites in Mr. Miner's letter, and
5 allow Gary interim status, even though it had
6 not filed the August 18th, 1980 notice. Does
7 this appear to answer that issue?

8 A. I'd have to look at it more carefully
9 again. I can't state that I agree that that's
10 exactly what it says.

11 Q. Okay. In the next to the last
12 paragraph, you see where it says, "because of
13 the above factors and the Agreed Order reached
14 in early 1983, it is not in the public interest
15 for Gary Development Landfill to be issued an
16 interim status compliance letter." Isn't the
17 interim status compliance letter the same thing
18 that's talked about as a compliance order in
19 Mr. Miner's letter?

20 A. I believe that's true.

21 Q. So, this letter sets forth the reason
22 why the Agency was not going to exercise its
23 discretion?

24 A. The letter appears to indicate that.

1 Q. Okay. Do you see the phrase
2 "unacceptable operation", quote-unquote, in the
3 State inspections?

4 A. Yes.

5 Q. Okay. This letter was written on
6 February 8th, 1984. There's been testimony by
7 Mr. Warner that to his knowledge, RCRA
8 inspections did not begin at Gary Development
9 until 1985. So would you believe that these
10 would be inspections as a sanitary landfill,
11 would be referred to here?

12 A. Yes, yes.

13 Q. Do you see any reference in this
14 letter to any other waste, as to nature and
15 quantity, whatsoever, other than American
16 Chemical Service waste?

17 A. I don't see any other notation to
18 other hazardous waste, except in reference
19 to -- in the first paragraph on page one, where
20 these particular wastes might be included in
21 the waste stream that is designated as F005.

22 Q. Now, you're looking at -- I'm sorry,
23 which paragraph?

24 A. The last paragraph on page one.

1 Q. The last paragraph on page one,
2 right?

3 A. It is a conclusion of the Agency at
4 this point that these -- any or all of these
5 particular listed numbers of hazardous waste
6 might be included in F005.

7 Q. They're still talking about the
8 American Chemical Services waste only?

9 A. That's correct, yes.

10 Q. On the second page, the other
11 paragraph or line that I noted to you that
12 discusses the Agreed Order, capital "A" capital
13 "O", between the Environmental Management Board
14 and Gary Development in early 1983, do you know
15 what Mr. Klepitsch was talking about there,
16 what Agreed Order he was referencing as a part
17 of his decision not to exercise the Agency's
18 discretion and allow Gary interim status?

19 A. I could guess at it, but I don't
20 know.

21 Q. Well, what's your guess? Do you want
22 to classify that guess?

23 A. Cause Number N-53, perhaps.

24 Q. Here's my copy given to me yesterday

1 of Complainant's Exhibit Number Four, which was
2 offered and entered into evidence over my
3 objection. And turn back, oh, midway through
4 this document with its many attachments -- by
5 the way, this is the Harding and Lawson report
6 which you mentioned this morning on ground-
7 water. And you see in there, as one of the
8 appendices, a document entitled Settlement
9 Agreement and Recommended Agreed Order in the
10 Matter of Gary Development, Inc., Petitioner,
11 versus the Environmental Management Board of
12 the State of Indiana, Cause Number N-53?

13 A. Yes, I see that.

14 Q. Okay. Is this the Agreed Order that
15 you're discussing?

16 A. That was my guess that that was it.

17 Q. And do you agree that the data
18 appearing on the last page, page 20 of the
19 Agreed Order, underneath the signature of Ralph
20 Pickard, Technical Secretary of Indiana
21 Environmental Management Board, appears to be
22 February 18th, 1982 -- I'm sorry, 1983?

23 A. 13th or 18th, I'm not sure.

24 Q. Either February 13th or 18th, 1983?

1 A. Yes.

2 Q. Have you read this Agreed Order at
3 anytime?

4 A. Not recently.

5 Q. Do you know whether the Agreed Order
6 discusses the manner in which monitoring of
7 groundwater shall be conducted at this
8 facility?

9 A. I don't know that.

10 Q. Okay. Let me hand you this docu-
11 ment -- again, my copy, because the Judge has
12 the other copy -- and call your attention to
13 page four of this Agreed Order, item number
14 six; and ask you if that contains provisions on
15 how this site should monitor its groundwater?
16 (Tendered.)

17 A. Yes, I think it does.

18 Q. Okay. The next page of this document
19 is a very very poor reproduction, is that
20 correct?

21 A. Yes, that is.

22 Q. Part of it is totally unreadable?

23 A. Yes.

24 MR. KREBS: Is yours the same?

1 THE COURT: Yes.

2 MR. KREBS: Yesterday I gave you
3 a certified copy of that one, which
4 would have that page in good shape.

5 THE COURT: (Tendered).

6 THE WITNESS:

7 A. Mr. Krebs, may I add something for
8 the record?

9 MR. KREBS:

10 Q. Sure, go right ahead.

11 A. I expect that those, again, are
12 referring to the type of monitoring required
13 under Indiana Solid Waste Disposal and not --
14 those are not RCRA Regulations.

15 Q. Okay, let's get a better copy, and
16 then I'll give you the better copy and I think
17 you can read it; and that'll help out on your
18 answer, also.

19 Let me hand you what's now been marked as
20 Respondent's Exhibit Four, which on its front
21 page is a certification by James M. Garrettson,
22 Administrative Law Judge, Indiana Department of
23 Environmental Management, as to the attached
24 document being a correct -- a certified copy of

the Settlement Agreement and Recommended Agreed
Order in N-53, and ask you just, basically, if
that appears to be the same document that is
attached in Complainant's Exhibit Number Four?

A. Yes, it is Cause Number N-53.

Q. Looks like the same thing?

A. Yes.

Q. Okay. And the page that is very illegible in the other document, number four, is legible in this one, correct?

A. Yes, it is.

Q. Okay.

MR. KREBS: At this time we would offer into evidence the certified copy of the Settlement Agreement and Recommended Order in N-53, before the, at that time, Environmental Management Board of the State of Indiana.

MR. RADELL: I have no
objections, Your Honor.

THE COURT: Number Four is
received by Respondent.

(Respondent's Exhibit No. 4 is Admitted)

1 MR. KREBS:

2 Q. Okay, now your -- I think you said
3 that you believe that the types of parameters
4 that are in that document are -- if I can find
5 my copy -- are what types of parameters?

6 A. They appear that they may be a list
7 from 330 IAC regulations regarding solid waste
8 disposal sites in Indiana.

9 Q. That would -- giving you another copy
10 here -- include such things that are listed in
11 here, specifically, in the document as
12 chloride, chemical oxygen demand, total
13 hardness, total iron and total dissolved
14 solids?

15 A. Yes, sir.

16 Q. There's also discussion in here as to
17 the location and replacement of a well?

18 A. Yes.

19 Q. Okay. Mr. Cooper, if this settlement
20 agreement in your opinion has nothing to do
21 with hazardous waste and hazardous waste
22 regulations, could you tell me, number one, why
23 it was contained and attached by your
24 consultants in Harding and Lawson, in the

1 report that your Agency requested regarding an
2 investigation at the site; and, secondly, why
3 it was specifically referred to by
4 Mr. Klepitsch, in his letter of 1984, as a
5 reason for not exercising the Agency
6 discretion, if it has nothing to do with a
7 hazardous waste?

8 A. In the first instance, Harding and
9 Lawson Associates attached that document to the
10 report, I assume, because of the paucity of
11 information available to them from Gary
12 Development regarding the conditions on site,
13 as far as the geology, the wells on site, type
14 of material, type of constituents being tested
15 for in water. They were attaching everything
16 they could to the report dealing with
17 groundwater monitoring.

18 The second question, I don't have an
19 answer for that.

20 Q. The second question meaning regarding
21 Mr. Klepitsch's reference to this document?

22 A. Yes, I'm not familiar with the
23 decision that was made and why the decision was
24 made.

1 Q. Page seven of this Agreed Order,
2 paragraph 8(b), states, " Petitioner shall be
3 permitted to continue receiving the following
4 special wastes from the effective date of this
5 order, until further action of Board or staff."
6 And listed there are four items, and number
7 four says, "The following steel mill sludges
8 from J & L Steel Corporation: the Central
9 Treatment Plant Sludge, the Terminal Treatment
10 Plant Sludge, and the sludge from the 6 Stand
11 Oil Stand Recovery Unit." Do you see that
12 there? (Tendered.)

13 A. Yes.

14 Q. Is that the same waste that you've
15 discussed as having been listed at one time as
16 F006 waste of Jones and Laughlin?

17 A. (B)(4) on page seven would -- some of
18 that would fall into that category, the Central
19 Treatment Plant sludge or perhaps the Terminal
20 Treatment Plant sludge.

21 Q. Part of it would, then?

22 A. I'm not sure. There's three
23 different sludges mentioned. I wouldn't know
24 if that F006 included all three, I'm not sure

1 if it would have included it.

2 Q. But you think it, at least, would
3 have included the Central Treatment Plant
4 sludge and perhaps one other?

5 A. That's my understanding of it, yes.

6 Q. Okay. Do you see a reference in here
7 at the bottom of page seven to Indiana Code
8 13-7-11-3 (indicating)?

9 A. I see it. I'm not familiar with what
10 it is.

11 Q. You're not familiar with that. You
12 wouldn't know if that's part of the Indiana
13 Environmental Management Act passed by the
14 General Assembly of the State of Indiana?

15 A. It may be. It's not specific as to
16 if it's 320 or 330. The numbers have changed
17 since that N-53 agreement was reached.

18 Q. We discussed -- I think it was
19 yesterday, it may have been today -- your
20 opinion about liners and barriers in connection
21 with landfills or facilities; and I believe, in
22 general -- I'm not trying to repeat your
23 testimony -- but you were discussing that
24 thickness is one criteria in determining the

1 walls of landfills; the side wall is an
2 important criteria in determining the potential
3 threat of that facility to the environment.

4 A. Thickness is one factor. There are
5 several other factors involved.

6 Q. What would the other ones be?

7 A. The type of material, the grain size
8 or the particle size of the material you're
9 using for the wall, the compaction of that
10 material, following its excavation and removal
11 and dumping at that place where the wall is
12 being built; based on the compaction and
13 according to its permeability would be, of
14 course, important, as well.

15 Q. Okay. So, one thing is compaction
16 and how things are constructed is part of your
17 response, correct?

18 A. Very important, yes.

19 Q. In the Agreed Order that we were
20 discussing, page four, paragraph number five,
21 it says, as a Condition Number Seven, "The clay
22 perimeter seal along the southside of the site
23 shall be constructed to an elevation of 589.7
24 MSL and shall be at least 10 feet wide. The

1 parties expressly agree that the portion of
2 Petitioner's landfill located at the
3 southeastern portion of the site which is
4 completed and at final grade as of December
5 14th, 1982, will not be affected by this
6 requirement."

7 Let's assume that that clay perimeter seal
8 discussed here, at a minimum of 10 foot wide on
9 the south side of the site, has been
10 constructed. Is that an important factor in
11 determining potential threat from this site?

12 A. I think the documentation as to how
13 it was constructed, photographs, engineering
14 reports, people on site that were monitoring
15 the compaction, should all be very important.
16 And if it was constructed properly, it would --
17 it might reduce the chance of migration, off
18 site, probably; but it would not -- it probably
19 would never be eliminated.

20 Q. What's along the south side of Gary
21 Development Landfill?

22 A. Grand Calumet.

23 Q. The river?

24 A. The river, yes.

1 Q. Okay. In making your analysis of the
2 potential harm from this site and including but
3 not limited to the fine calculation that you
4 made, did you check into whether Gary
5 Development had completed this requirement set
6 forth by the Indiana Environmental Management
7 Board in the Agreed Order?

8 A. I believe that I have -- I cannot
9 site specific documents, but I've seen numerous
10 documents indicating that Gary Development did
11 not live up to virtually all of the
12 requirements in those documents.

13 Q. Okay. So your opinion is that they
14 haven't done this yet, on this perimeters seal,
15 the item -- condition number seven, item number
16 5, the clay perimeter seal?

17 A. I wouldn't say they haven't done it.
18 I would just say that I don't think the reports
19 that I have looked at and reviewed and the
20 statements from Indiana State Board of Health
21 Officials and the quarterly tests and things
22 that generally indicate the facility was not in
23 compliance with many of those things. They may
24 have put up a wall, but it may not have been

1 constructed to the EP fill specified.

2 Q. What people are you talking about?
3 You said information given to you by the State
4 people. Who in particular?

5 A. Well, Cause Number N-46, perhaps.

6 Q. N-146?

7 A. N-146. I wouldn't -- I'm saying that
8 off the top of my head. I believe there are
9 statements in there that state that, in
10 general, a lot of the things that were supposed
11 to have been done by Gary Development that were
12 not done. I know there are other documents, as
13 I say, I can't bring forth at this time.

14 Q. But N-146 is one thing that comes to
15 your mind?

16 A. Yes.

17 Q. Okay. In connection with assessing
18 potential threat and your penalty, would
19 another factor, as to the liner of the site and
20 the type construction of the site that would be
21 very important, would be the permeability of
22 the clay walls of the facility and the
23 permeability of the clay beneath the site?

24 A. Yes.

1 Q. Okay. And, really, in looking at any
2 type of clay barrier, those are two significant
3 factors, is it not; not just the thickness, but
4 the permeability of the material?

5 A. Yes.

6 Q. If you don't know one, you really can't
7 make a very good calculation, either way?

8 A. Correct.

9 Q. Okay. In this Agreed Order, if you
10 glance here at page five -- no, let's skip to
11 page six, paragraph C at the top of page six
12 says, "If the test results show that the
13 permeability of the west perimeter wall is 5.1×10^{-6}
14 centimeters per second or
15 greater; i.e., 5.1×10^{-6} , 6×10^{-6} to
16 the -6 , 7×10^{-6} to the -6 , 8×10^{-6} to the -6 , $9 \times$
17 10^{-6} to the -6 , 1.0×10^{-5} to the -5 , 1.0×10^{-4} to
18 the -4 , etc.; or if the staff identifies a
19 significant infiltration problem involving a
20 concentrated flow of liquid into the site
21 through the west wall or emanating from an area
22 of disposed solid waste along the wall, then it
23 is agreed that further negotiation between the
24 parties will be required to determine what

1 remedial action, if any, must be undertaken
2 along the west wall." Do you see that?

3 A. Yes, I do.

4 Q. Okay. And on the prior page, do you
5 see where it says, "If the test results show
6 the permeability of the clay wall to be 5×10
7 to the -6 centimeters per second or less --,"
8 then they go on and describe what less means
9 and I'm not going to read all the horrible
10 numbers -- "then no remedial action for the
11 west clay perimeter wall will be required,
12 unless staff identifies a significant
13 infiltration of liquid, as discussed in
14 subparagraph 7c." Do you see that?

15 A. Yes, I do.

16 Q. Were you familiar at all with this
17 standard set forth and established by the
18 Indiana Environmental Management Board, this 5
19 times 10 to the -6 or less?

20 A. Only from reviewing the document.

21 Q. Do you know whether Gary
22 Development's west wall is, in permeability, 5
23 times 10 to the -6 centimeters per second or
24 less?

1 A. I don't know that for a fact.

2 Q. Do you know whether it's ever been
3 determined by the State Environmental
4 Management Board that Gary Development's west
5 wall has a permeability acceptable under this
6 Agreed Order?

7 A. I don't know that for a fact, and I
8 have no details, except one or two memos that
9 we've discussed previously regarding the
10 thickness of the wall. The permeability is
11 only one factor; the thickness is important, as
12 well.

13 Q. You mentioned in my questions to you,
14 specifically, about the clay perimeter seal,
15 you said that you felt that Gary probably had
16 not done that; and your information from State
17 Officials is that they don't do many of their
18 requirements, basically. Would you be
19 surprised to find out that an Administrative
20 Law Judge of the Department of Environmental
21 Management, Environmental Management Board, the
22 Solid Waste Management Board now -- they keep
23 changing these names, so we can't keep them
24 straight -- ruled that indeed Gary Development

1 had built correctly the clay perimeter seal on
2 the south side of the facility?

3 A. Personally, I would be surprised.

4 Q. You would be surprised at that?

5 Would you be surprised if an Administrative Law
6 Judge of the Department of Environmental
7 Management of the State of Indiana and Solid
8 Waste Management Board had determined that the
9 evidence revealed that the clay perimeter wall
10 on the west side of the facility was 9 to 18
11 times less permeability than this agreement
12 required?

13 A. I would be surprised.

14 Q. Less permeable being better?

15 A. Right. I haven't seen the evidence
16 on which he based his decisions. I've just
17 seen the memos indicating noncompliance.

18 Q. Would those types of factors --
19 wouldn't those types of factors make a
20 significant impact on any kind of determination
21 of the potential threat to the environment by
22 this facility?

23 A. If they were accurate, that would
24 make a difference, yes.

1 Q. If they are accurate?

2 A. Yes.

3 Q. I would like you to look, Mr. Cooper,
4 at Complainant's Exhibit Number 13. I think
5 I'll bring my copy up, so that the Judge can --
6 might make it easier to have two up here.
7 (Tendered).

8 Complainant's 13 is a exhibit, I believe,
9 which was submitted into evidence yesterday,
10 being a memorandum from a Richard Jones to Stew
11 Miller. Do you recall this document?

12 A. Yes, I do.

13 Q. Okay. And in the second paragraph it
14 says, beginning in the second -- or let's start
15 with the first part of it, the first sentence,
16 "Outside the north wall, between the landfill
17 and the railroad tracks, is more drainage
18 runoff, which may be from Vulcan Recycling
19 Company, but runs onto the Gary Land
20 Development property. This drainage may
21 contain some chemical parameters that are toxic
22 or above standard (as the monitoring well
23 samples are)." Do you see that?

24 A. Yes.

1 Q. When you were out at the facility
2 when you -- let's see, you're been there once
3 or twice?

4 A. Yes, I've been there once.

5 Q. When was that again, fairly recently?

6 A. August 27th.

7 Q. August 27th, '87. When you were at
8 the facility, did you note this drainage that
9 Mr. Jones reports coming from Vulcan Recycling
10 Company onto the Gary Development Landfill
11 site?

12 A. Not specifically. There, I wasn't
13 close enough to that location to notice.

14 Q. Do you know whether the Indiana
15 Environmental Management Board, part of the
16 Environmental Management, the Solid Waste
17 Management Board or U.S. EPA, has taken any
18 action, whatsoever, as to Vulcan Recycling
19 Company as to this suspected pollution of the
20 Gary Development site?

21 A. I'm not aware of anything,
22 specifically.

23 Q. How long have you known about this
24 memorandum, February 6th, 1986?

1 A. Probably, at least, for a year and a
2 half.

3 Q. Year and a half. And did you ever
4 feel the need to commence an enforcement action
5 against Vulcan Chemical for possibly polluting
6 the landfill?

7 A. It was never referred to us by the
8 Indiana Department of Environmental Management.

9 Q. Okay. And you're saying, then, if it
10 wasn't referred to you, you don't take any
11 action?

12 A. The State is authorize to take its
13 own action and make decisions on whether it
14 will take an action or whether to refer it to
15 U.S. EPA.

16 Q. Okay. Does that mean that you don't
17 take any action, unless it's referred to you by
18 the State?

19 A. That's not always the case. It's my
20 understanding that Vulcan was told by the
21 Indiana Department of Environmental Management
22 to stop using an underlying pond, but that's
23 the extent of my knowledge of that site.

24 Q. Have you ever seen that lake of water

1 out there between Vulcan Chemical and Gary
2 Development?

3 A. I've seen water. I don't know
4 whether the lines are from one -- you know, the
5 property boundaries.

6 Q. In reviewing any of the documents
7 related to Gary or talking to Mr. Hagen, which
8 you said you did the other day -- or in talking
9 to the State of Indiana environmental people,
10 did you ever come across any evidence that
11 Vulcan Chemical had increased the elevation of
12 their lot and facility, resulting in runoff
13 coming from it onto the landfill?

14 A. No.

15 Q. Is that a matter of significant
16 concern to you, if that has occurred?

17 A. I have no opinion.

18 Q. Okay. Is it a concern to you if, in
19 fact, Vulcan Chemical is dumping polluted water
20 onto the Gary Landfill facility?

21 A. If that were true, that would be a
22 concern, yes.

23 Are you saying that this lake is an
24 elevated lake or is it a level of, say, the

1 building which is --

2 Q. Well, I don't know.

3 A. -- located at Gary Development?

4 Q. Okay. What did you -- I mean, what
5 do you recall from when you were there? I
6 don't recall.

7 A. I recall a body of water, but that
8 would not be surprising to have a body of
9 water. The groundwater table may be two feet
10 below the surface at that point. If there was
11 a hole, there's going to be water, if it's not
12 pumped out.

13 Q. You think the groundwater is two feet
14 below that west area of Gary Development
15 facility?

16 A. In the Harding Lawson report, I
17 believe, as I recall, indicated the water
18 level -- water table was very near the surface
19 of the original land surface.

20 Q. As a geologist, what would be your
21 opinion if it is shown -- which the evidence
22 will reveal, and this is a hypothetical
23 question -- that the body of water on the
24 boundary between the Vulcan Chemical Recycling

1 Plant and Gary Development sits there
2 continuously, 365 days a year, rain, snow,
3 drought, etc.?

4 A. It wouldn't surprise me, if it was
5 the same level as the top of the water table
6 and there was an excavation there; that
7 wouldn't even surprise me at all.

8 Q. If the water sits there on a
9 continual basis, in your opinion, would that be
10 evidence that there is infiltration into the
11 fill area on the west side; or would it be
12 evidence that there is no infiltration into the
13 fill area?

14 A. I don't think you can state.

15 Q. Okay.

16 A. It would require more information to
17 make a decision on that.

18 Q. Did the State people that you have
19 referred to that had talked to you about Gary
20 Development, which you believe have requested
21 you and EPA to bring this case, did they ever
22 give you a copy of the decisions of the
23 Administrative Law Judge in this Cause Number
24 N-146 that you mentioned? Did they ever send

1 you copies of what this ALJ decided concerning
2 Gary Development suing the Environmental
3 Management Board?

4 A. I believe Cause N-146 was part of the
5 referral package from the Indiana State Board
6 of Health.

7 Q. Evidently, you didn't read it; is
8 that correct?

9 A. I read it.

10 Q. If you read it, why wouldn't you know
11 what the Administrative Law Judge held, such as
12 regarding the clay perimeter barrier on the
13 south side, the permeabilities of the west
14 wall, the pond of water on the boundary line
15 between Gary Development and Vulcan Chemical?
16 If you read it, why wouldn't you know any of
17 those factors that have been determined? You
18 forgot it?

19 MR. RADELL: I think he's
20 harassing the witness, Your Honor.

21 THE WITNESS:

22 A. I would have forgotten, yes. All I
23 was citing in there were the conclusions of the
24 second to the last page of that cause number.

1 The evidence is conflicting.

2 MR. KREBS:

3 Q. What evidence?

4 A. The evidence which I see in State
5 memos, and I'm not sure what other evidence
6 might have been presented to the Judge.

7 Q. Conflicting on what issue, things
8 like --

9 A. As to whether the adequacy of the
10 wall was sufficient in thickness and
11 permeability.

12 Q. Well, let's assume you're correct and
13 let's assume the evidence is conflicting. If
14 the evidence is conflicting, how can you make
15 accurate decisions on characterizing the
16 potential threat from this facility, if there's
17 conflicting information from a scientific
18 standpoint? Can you throw out certain
19 information and only consider certain other
20 information?

21 A. The penalty was based on much much
22 more than the potential threat to the
23 environment. The other factors we've already
24 discussed, potential threat to the program,

1 RCRA program itself, and deviation from the
2 regulations required by RCRA.

3 Q. Which factor is the biggest? Effect
4 on your program, is that the biggest factor in
5 the evaluation of the fine? Do you think it
6 looks bad on the Government's program that Gary
7 Development doesn't think it should be a RCRA
8 site? Does that give them most of the fine,
9 that factor?

10 A. The effect of the overall program of
11 complete noncompliance of a hazardous waste
12 facility with RCRA Regulations is a major
13 configuration in the figuring of the penalty.

14 Q. Okay. How major is that? I mean, is
15 that 50 percent of the penalty; is that 80
16 percent of the penalty? You gave three
17 different factors. How does that one weigh in
18 the percentage, in the amount of money in which
19 you calculated, that you think Gary Development
20 should pay the Government?

21 A. It's hard to say when you look at
22 each factor. You have to look at each
23 regulation as violated, individually. You have
24 to look at the wording in the penalty policy,

1 as well.

2 Q. Let me ask it this way. Is that
3 factor greater -- when you calculate your fine,
4 does that give a bigger fine, more than the
5 factor of potential threat to the environment?

6 A. I can't put a figure on it.

7 Q. Is there any way to read that
8 document that has been admitted into evidence,
9 I think it's Complainant's 29, and figure that
10 out?

11 A. I don't think you would be able to
12 come up with a number on it, though. There are
13 two factors to start with, so you're 50/50 at
14 that point. As I said, deviation is one
15 factor; that's 50 percent at that point.

16 Q. Now, which is 50 percent, I'm sorry?

17 A. If you had a major major factor,
18 right away your 50 percent would be toward
19 deviation from the regulations; 50 percent
20 would be toward potential for harm. There are
21 too many factors involved to be able to assign
22 percentage, accurately, at least.

23 Q. On your calculations, which is
24 Exhibit Number 29, on the second page on the

1 back, you got in printing an item that says
2 "moderate"; and item (b) says, "Without a waste
3 analysis, GDC may not have been placing all
4 hazardous waste in their designated hazardous
5 waste disposal area." Do you recall that?

6 A. Correct.

7 Q. Can you tell me where at Gary
8 Development's 62-acre facility are the, quote,
9 designated hazardous waste disposal area?

10 A. It's a little -- supposedly, on Part
11 A, it's shown to be a 208-foot by 208-foot
12 square, located sort of in the middle, to the
13 northwest of the property, as I recall.

14 Q. Middle to the northwest of the
15 property. And how big, approximately?

16 A. 208 x 208 feet.

17 Q. Okay. Well, how could they have such
18 a designated hazardous waste disposal area, if
19 the Government's determined they don't have
20 interim status to begin with? How could you
21 have a designated hazardous waste disposal area
22 without interim status?

23 A. Designated in Part A does not mean
24 that it was going to be done, and interim

1 status has nothing to do with submittal of a
2 Part A. It has three items that we've already
3 discussed to achieve interim status.

4 Q. Well, isn't the term "designated
5 hazardous waste disposal area" a term of art, a
6 very significant term in this business of
7 regulations?

8 A. I don't know. I haven't come across
9 it that much in my work.

10 Q. Have you ever read the decision which
11 I discussed yesterday by Administrator Lee in
12 Northside Sanitary Landfill, RCRA Appeal 84-4?

13 A. No, I haven't.

14 Q. Another page from this document --
15 and I don't think there's a number. I believe
16 the cover page would be 1-2-3-4-5, I think six
17 pages back and it's also on the back side and
18 it would be your printing, I guess; and it
19 says -- this is under another item of moder-
20 ate -- it says, "Note: Documented mixing --"
21 do you have it there?

22 A. Yes.

23 Q. Good -- "mixing of leachate, infil-
24 trating groundwater and surface runoff --," and

1 there's a long line -- "this mixture has
2 apparently been pumped into the Grand Calumet
3 River in dewatering process at the old barrow
4 pit." And in connection with this statement of
5 yours, from your review of the documents and
6 assessing the risk of this site and fines,
7 etc., were you aware that the dewatering of the
8 old barrow pit occurred in 1973, before there
9 was anything disposed of at this facility?

10 A. I believe, Mr. Krebs, this is an
11 ongoing progression. The water, as I've
12 discussed already, the water table was very
13 close to the surface; any part that is below
14 the water table on the site is going to fill up
15 with water. Heavy rains are going to cause a
16 lot of water to sit on the site. I, in fact,
17 myself have gotten a phone call, telling me
18 of -- or maybe not me, specifically, probably
19 someone from the Water Division. I was
20 notified of the call and have memos in the
21 file, regarding pumping of the water into the
22 Grand Calumet River. This allegation also is
23 made on one -- at least one other State
24 document.

1 Q. Is that something Gary Development's
2 been sued over, pumping contaminated water in
3 the Grand Calumet River?

4 A. I don't think they've been sued, but
5 they have been cited as violations, previously.

6 Q. By who and when?

7 A. State Inspector and also -- as I say,
8 a phone call. You can check the file for memos
9 on that from myself.

10 Q. And when you say cited as a
11 violation, when you use that term, do you mean
12 somebody wrote some document up and made some
13 inspection and wrote something on there, and in
14 your opinion that means cited as a violation;
15 or do you mean the Environmental Management
16 Board or Commissioner of the Department of
17 Environmental Management filing a complaint?

18 A. It was noted in the files. There was
19 no complaint filed on it. It was noted and,
20 presumably, a warning was issued.

21 Q. So, you're saying you think you may
22 remember from some telephone call to somebody
23 else in your department that this facility is
24 polluting the Grand Calumet River, but no

1 action has ever been filed against them by the
2 State or EPA for doing this?

3 A. I don't think; I remember. I
4 remember specifically, very specifically, that
5 charges were brought. I don't know that it was
6 followed up on. I sent a memo to another party
7 to follow up on it; and I have seen in writing
8 memos from IDEM or the Indiana Department of
9 the Environmental Management or ISBH, regarding
10 previous offenses of this.

11 Q. Okay. And you think charges have
12 been brought sometime?

13 A. Oh, I don't think charges have been
14 brought; I think it's been noted as a
15 violation. I don't know of any charges that
16 have actually been brought. I know that it has
17 been mentioned in memos and, presumably, it's
18 been mentioned to the operators of the
19 facility.

20 Q. Okay. But you don't have those with
21 you here, those memos or you do have them?

22 A. I have my memo of the record filed
23 regarding the phone call which was directed to
24 me.

1 Q. I was talking about you said there
2 were memos from the State?

3 A. I'm not sure that they are with me.

4 Q. Is there anything in this complaint
5 accusing Gary Development in this case of
6 polluting the Grand Calumet River?

7 A. No, there isn't. You raised it when
8 you were discussing this.

9 Q. That would be a pretty significant
10 factor, I mean, if any of that was going on,
11 wouldn't it; the potential harm for this site,
12 if you could prove they were polluting the
13 river?

14 A. Certainly would be and it would be
15 addressed by the other Water Division of EPA.
16 It would not be addressed by RCRA Enforcement.
17 At least if it were, it would be -- that would
18 be my opinion, it would be addressed by that
19 division of EPA.

20 Q. Okay. So you wouldn't have any
21 obligation or any authority to put some kind of
22 pollution into a stream or river allegation in
23 this complaint, is what you're saying?

24 A. It would be addressed by the Water

1 Division. I've not looked through their files
2 to see if any action has been brought against
3 Gary for that reason.

4 Q. In talking about all of this horrible
5 stuff and the State writing all these memos and
6 so forth, would you be surprised if the
7 evidence will show in this case that between,
8 let's say, September, 1984, and the end of
9 1985, right during the same period that you say
10 this case was referred to you to file this
11 complaint, that the Environmental Management
12 Board Inspectors rated this site acceptable 90
13 percent of the time in 21 separate site
14 inspections?

15 A. I'm sure you'll provide documentation
16 of that effect.

17 Q. Has anybody ever told you that? I
18 mean, did the State ever send you those
19 inspection reports?

20 A. I may have reviewed that, I don't
21 know. I've seen documents to the contrary, as
22 well, discussing perhaps different periods of
23 times.

24 Q. Different periods of times. How long

1 ago?

2 A. Between 1973 and -- or 1983 and 1984
3 is my recollection.

4 Q. Would you be surprised that to find
5 out that during a period of about a year and a
6 half they didn't inspect this site except three
7 times, the State, in 1984?

8 A. I wouldn't be surprised. RCRA
9 inspections are done sometimes once a year, and
10 I think the inspections you're discussing have
11 nothing to do with RCRA.

12 Q. Sanitary landfill inspections?

13 A. That's right. Those are under
14 different regulations, different scheduled
15 inspections, different regulations they are
16 looking at.

17 Q. Different regulations?

18 A. Right.

19 Q. Do you think or do you know, would a
20 sanitary landfill inspector for the Indiana
21 Department of Environmental Management, would
22 he be concerned in inspecting a site, if he
23 felt that that site was polluting the river?
24 Do you think he would mark that on his

1 inspection report?

2 A. I would think he would pass the
3 information on.

4 Q. Calling your attention to
5 Complainant's Exhibit Number 23, which you
6 sponsored into evidence, being a letter which
7 you've identified from USS Lead Refinery, Inc;
8 dated September 29th, 1986, with numerous
9 attachments to it. The first line reads, "USS
10 Lead Refinery, Inc. has received from the U. S.
11 Environmental Protection Agency, Region V, a
12 request for information about hazardous waste
13 which US Lead may have shipped to the site
14 owned and operated by Gary Development, Inc."
15 Do you recall that statement?

16 A. Yes, I do.

17 Q. Did you look through these manifests
18 that were sent?

19 A. Yes, I have looked through them.

20 Q. Did you notice any one of -- how many
21 are there? Do you know how many there are?

22 A. I estimate a couple hundred, I really
23 don't know.

24 Q. Out of the couple hundred here, are

1 any of them signed where it says "acknowledge-
2 ment of receipt of waste shipment"?

3 A. I don't believe any of those are --
4 they are all the generator has signed them, the
5 transporter has signed them; and the designated
6 disposal site is Gary Development, but no one
7 has a signature next to that.

8 Q. Did you hear Mr. Warner testify that
9 in his inspections, RCRA inspections to this
10 site, that he marked it acceptable for its
11 security-related matters and said there's a
12 fence all around the site and you can't get
13 into it except by going by a roadway where
14 there is a person at, and you have to stop
15 there to even enter?

16 A. Yes.

17 Q. So you're wanting the Agency here to
18 believe that all this waste was shipped by US
19 Lead and Gary Development, over 200 manifests;
20 and not one of them ever got the signature by
21 anybody from Gary Development? They just
22 brought this waste in and no one ever signed
23 for anything?

24 A. That's what they indicate, yes.

1 Q. Regarding US Lead, you used one
2 figure -- you had two different figures as to
3 calculations of the total volume of waste, and
4 one was gallons and one was pounds; and I got a
5 little confused. Is the 33 million -- was
6 there a 33-million figure you calculated?

7 A. I don't recall that figure. I think
8 it was like three million pounds. It was a
9 figure we took off of the generator annual
10 waste report.

11 Q. From US Lead?

12 A. That is -- yes, that is where that
13 figure has come from. Initially, I thought I
14 had calculated that and actually converted
15 gallons to pounds; but I was incorrect in that
16 statement.

17 Q. How do you convert from gallons to
18 pounds, how do you do that?

19 A. I may be -- actually, at this point I
20 may be confusing the two manifests and two
21 wastes that we discussed this morning. Perhaps
22 I was discussing at that time the decanter tar
23 sludge. I don't recall our earlier
24 discussions, in which figures applied to which

1 ones.

2 Q. Okay. My last question was, how do
3 you convert from gallons to pounds, get that
4 determined? How do you do that?

5 A. Well, if it was done, you would have
6 to determine a specific gravity of the
7 substance, the density of the substance, so
8 much weight per volume; and then you would turn
9 to the table and find out how many -- how much
10 volume was in it, a gallon, and then it
11 converts.

12 Q. How can you do that with sludge?

13 A. Well, was it done?

14 Q. I don't know.

15 A. Well, I don't want to answer the
16 question, if I don't have something in front of
17 me that I can see what I'm talking about.

18 Q. Okay. I thought you testified this
19 morning that you did some conversions from
20 gallons to pounds or vice versa?

21 A. I think we were discussing another
22 waste, but I did say that I thought we had done
23 that. But the reason the numbers are
24 different, is that the waste that was in

1 question on the manifests was listed in gallons
2 by the company; and on its annual report to the
3 State was listed in pounds, rather than
4 gallons, as on what we received in the
5 manifest.

6 Q. Okay. So, then it was converted?

7 A. Evidently, the company must have
8 converted them. They must be aware of the
9 specific -- or the density of that material.

10 Q. So, you wouldn't have done any kind
11 of conversion, is that what you're saying,
12 somebody else would?

13 A. I couldn't do a conversion, unless I
14 had a density of the material that was being
15 converted, from one form to another.

16 Q. Okay. let me ask you a very simple
17 question. How much waste do you and EPA
18 believe that was disposed of at Gary
19 Development which was generated by USS Lead?

20 A. That's a rather broad question.
21 Because are we talking about F006, are we
22 talking about K087?

23 Q. No. I'm talking about the waste --

24 A. For what period of time?

1 Q. I'm talking about the waste that you
2 get listed on these manifests that you
3 sponsored into evidence as Plaintiff's Exhibit
4 Number 23?

5 A. I don't have that in front of me.

6 Q. Do you have it handy? I mean, this
7 isn't a trick question. Do you have it
8 somewhere here that you can get it?

9 A. I guess I can. I don't have it with
10 me. I can't answer your question until I do.

11 THE COURT: (Tendered.) I've
12 given the witness Number 23,
13 Complainant's.

14 THE WITNESS:

15 A. Your question is --

16 MR. KREBS:

17 Q. What's the total volume of this waste
18 that you believe was disposed of at Gary
19 Development?

20 MR. RADELL: Your Honor, I would
21 say that this exhibit, as you recall,
22 we withdrew certain manifests from
23 this exhibit today; and I doubt that
24 Mr. Cooper will have time to

1 calculate these figures right now,
2 based upon the withdrawal of certain
3 manifests from the exhibit.

4 MR. KREBS: I'll rephrase it, my
5 question.

6 Q. I'll limit might my question to what
7 it would have been without the removal of those
8 documents, and then you can calculate the other
9 way.

10 A. Excuse me.

11 THE COURT: Without the removal
12 of the documents?

13 MR. KREBS:

14 Q. Whatever you figured before. I mean,
15 don't sit here and take out the one and add
16 them back in and all that kind of stuff. Just
17 based on your prior calculations, even though
18 some of those didn't go into evidence, what was
19 the volume of waste that you believe, prior to
20 the change in that document today, that was
21 disposed of at Gary Development and generated
22 by USS Lead?

23 A. I don't know those numbers off the
24 top of my head. I'd have to go back to

1 something to refresh my memory.

2 Q. Do you have that there, something in
3 the courtroom?

4 A. I believe we have a summary, initial
5 summary of what we thought we had submitted;
6 but I don't recall those numbers, offhand.

7 Q. Okay. How about as to the Jones and
8 Laughlin decanter waste that you feel has been
9 disposed of at Gary Development and which you
10 believe it is a RCRA waste, what is the total
11 volume of that waste, as based upon the
12 document which you sponsored into evidence --
13 and if I can find it -- which is Complainant's
14 Number 20?

15 THE COURT: (Tendered).

16 THE WITNESS:

17 A. It would appear to be 273 million
18 gallons over 1980, 1981, 1982, based on the
19 summary on the second page of the submittal
20 from LTV Steel.

21 MR. KREBS:

22 Q. Okay. That's their summary, right?

23 A. That's their summary, yes.

24 Q. Okay. So you said how many, 273

1 million gallons, okay?

2 Now, what is the volume of the material
3 that you believe is RCRA waste and which you
4 believe was disposed of at Gary Development
5 which was generated by American Chemical
6 Services? And I believe there was a figure of
7 33 -- 33 loads?

8 A. It's actually 37 loads. We've
9 confirmed that from the manifests, as well as
10 the submittal in the answer to our 3007
11 request. And if I recall correctly, each load
12 was 2,750 gallons, I believe, times 37; and
13 that's the waste that was manifested as F005.
14 At some point it became unmanifested -- it was
15 evidently thought to be ignitable only -- and
16 we have no record of any waste that were
17 shipped under that.

18 Q. So you think 37 times what, 2700, did
19 you say?

20 A. 2750.

21 Q. Was that gallons?

22 A. I believe so, I'm going by
23 recollection.

24 Q. Is there anything that would -- any

1 document that would help you in answering that
2 question?

3 THE COURT: Here's Number 22.

4 (Tendered.)

5 MR. KREBS:

6 Q. Did you find a reference that will
7 help you on that question, 2750 gallons?

8 A. Yes, that's correct.

9 Q. And you're saying in Complainant's
10 Exhibit 22 that there are 37 loads, by manifest
11 here?

12 A. Yes, each one with 2,750 gallons.

13 Q. Okay. Now, the fourth waste that was
14 involved in this case, which you've now agreed
15 was delisted by EPA in late 1981, the Jones and
16 Laughlin -- was that the F006, I think?

17 A. Yes, and that waste was temporarily
18 delisted.

19 Q. Delisted during the time that it was
20 taken to Gary Development?

21 A. Correct.

22 Q. For several years?

23 A. Yes.

24 MR. RADELL: Your Honor, we've

1 already stipulated to the withdrawal
2 of all allegations concerning this
3 waste. So unless counselor can
4 explain why he's asking these
5 questions, I really see that serves
6 no purpose.

7 MR. KREBS: Sure, I want to see
8 what relationship that volume of
9 waste that's now been withdrawn in
10 this case was, in comparison to the
11 three other waste streams which are
12 still involved and how that may or
13 may not have affected the calculation
14 of potential harm of the site, the
15 calculation of the penalty. It may
16 be a significant factor.

17 THE COURT: That's certainly
18 proper.

19 MR. KREBS:

20 Q. So, as you can guess, my next
21 question is, what was the volume of F006 sludge
22 waste that at one time EPA was contending in
23 this case was disposed of at Gary Development
24 and generated by Jones and Laughlin Steel

1 Company?

2 A. It was considerable. I don't know
3 the figures.

4 Q. Can you check on that in your records
5 and give us those figures, along with the
6 figure for the volume of USS Lead waste?

7 A. That's very difficult to do on the
8 stand.

9 MR. KREBS: Your Honor, I would
10 request that we take a short recess.
11 We've been going for quite a time
12 already, anyway, since 1:30; and give
13 the witness an opportunity to look
14 over his documents.

15 THE COURT: We'll take 10
16 minutes.

17 (Proceedings recessed and Continued)

18 THE COURT: Shall we resume.

19 MR. RADELL: Yes.

20 THE COURT: Continue, Mr. Krebs.

21 MR. KREBS:

22 Q. Mr. Cooper, have you had the
23 opportunity to look or try to find the figures
24 that I asked you to calculate?

1 A. I was unable to for a couple of
2 reasons. First of all, we don't have --
3 because F006 has been removed as part of this
4 action, we have no manifest with us describing
5 volumes of that waste, whatsoever. The other
6 volumes and weights of the materials which you
7 suggested we try to total up, some are in
8 gallons, as you know; some are in cubic yards;
9 some are in pounds. There's really no way for
10 me to sit here and to calculate in 10 minutes
11 without a calculator. It will probably take a
12 half a day to do what you've requested.

13 Q. I think what you're saying is you
14 have the ability to make that calculation, but
15 it would take you a period of time to do that?

16 A. That's correct.

17 Q. Okay. The Judge has a calculator.
18 Could you do that by using her calculator?

19 MR. RADELL: I believe he
20 already said that he didn't have any
21 information regarding F006; and I
22 also wonder whether he, in fact, has
23 all the information to convert
24 everything to a specific common unit

1 of measure?

2 THE WITNESS:

3 A. I have no densities is what part of
4 the problem is. I have no densities for
5 specific things to convert to a common unit.

6 MR. KREBS:

7 Q. Well, if they were different, you
8 could give us -- I suppose, if some were
9 pounds, you could give us pounds; and those
10 that were gallons, you could give us gallons,
11 is that correct?

12 A. Would that be significant to you?

13 Q. Well, I think it's significant.
14 Isn't it significant to U.S. EPA, the volume of
15 RCRA waste at a facility?

16 MR. RADELL: Your Honor, I
17 believe at this point that they got
18 the exact same information that we
19 do. We've admitted all the relevant
20 documents into evidence. I don't
21 understand why it's incumbent upon
22 the Plaintiff to make calculations
23 for the Respondent.

24 THE COURT: Well, it is

1 certainly a fair question what the
2 penalty proposedly would be in this
3 case, in the absence of the amount of
4 F006 that was allowed out of the
5 proceeding. As a matter of fact, if
6 somebody doesn't calculate this and
7 if it should come to pass and I try
8 to figure out how to calculate it, I
9 wouldn't know what to do either. So
10 I'm most interested in the pursuit of
11 this matter; and somehow or other, I
12 think somebody should figure out what
13 the difference now is, based on
14 withdrawal of F006 from the
15 proceeding. You don't necessarily
16 have to do it at this moment, but you
17 have your expert penalty calculator
18 right here; and whether he starts off
19 with the number of gallons or the
20 pounds or whatever it is or whether
21 he just goes back and recalculates
22 the whole thing, based on what's
23 left, I don't care. I want to know
24 the answer to this question, too, at

1 some point.

2 MR. RADELL: We weren't aware
3 that this was going towards a penalty
4 calculation.

5 THE COURT: Well, doesn't it,
6 though?

7 MR. RADELL: It does, but we --
8 now that you've eliminated that for
9 us.

10 THE COURT: Well, maybe it is
11 more to it than that; but it
12 certainly is one of the things that I
13 have in the hearing before me.

14 MR. RADELL: If that is the
15 case, I believe that we would be
16 willing to provide -- not today,
17 because this would take time to
18 calculate -- to provide some sort of
19 demonstration of how the removal of
20 F006 from the complaint would affect
21 the penalty calculation.

22 THE COURT: All right. All
23 right, carry on, Mr. Krebs.

24 MR. KREBS: Thank you.

1 Q. Mr. Cooper, I think my last question,
2 basically, was isn't it a fact that EPA, in
3 evaluating sites with hazardous waste,
4 considers as a significant factor the volume of
5 RCRA hazardous waste disposed of at the
6 facility?

7 A. I imagine the volume would be taken
8 into account. However, the fact that a place
9 has received any volume at all of listed
10 hazardous waste is still subject to regulations
11 under RCRA.

12 Q. Okay. And on determining potential
13 threat, isn't volume a significant factor?

14 A. It would be considered.

15 Q. Have you ever seen any hazard ranking
16 score sheets that the States submit and
17 Region V submits and audits for sites listed on
18 the National Priorities List under a circular?

19 A. I haven't reviewed any myself.

20 Q. Do you know whether the volume of
21 waste at facilities is a significant factor
22 that EPA utilizes in determining scores for
23 listing sites on the NPL?

24 MR. RADELL: I don't understand

1 the relevance of this inquiry.

2 MR. KREBS: The relevance, Your
3 Honor, is, you know, we have all of
4 this testimony and we've got all of
5 these allegations that this site is a
6 terrible potential threat. And not
7 only in connection with a fine, but
8 in connection with the complaint says
9 and the witness exhibits said that
10 these people are going to be called
11 not only to testify that the site
12 should be regulated, but as to why
13 it's imperative to be regulated, why
14 it needs this kind of monitoring,
15 this kind of closure; and that's the
16 significance of it.

17 MR. RADELL: But, certainly,
18 it's an entirely different statute
19 with the different -- it regulates
20 different substances. Hazardous
21 substances under a circular are not
22 necessarily hazardous waste under
23 RCRA. So, I really don't see that
24 there's a direct parallelism here

1 that would be relevant to this
2 inquiry.

3 THE COURT: Well, I'll allow a
4 little more along these lines, and
5 we'll see. Continue.

6 MR. KREBS: Could you just
7 repeat that last question, would it
8 be possible. If I restate it, I'll
9 probably rechange it?

10 (Court Reporter Reads Question Back)

11 THE WITNESS:

12 A. I don't work in the circular program,
13 but I would not be surprised if that were a
14 consideration.

15 Q. Okay. You gave a figure, I believe
16 before we took a short recess for you to look
17 at your records, you gave a figure regarding
18 the Jones and Laughlin tar decanter waste in
19 connection with Complainant's Exhibit Number
20 20; and I believe the figure you gave was 273
21 million gallons, that's K087 waste?

22 A. That sounds correct.

23 Q. Isn't it correct that what Jones and
24 Laughlin actually reported was 273,000 gallons,

1 not million gallons?

2 A. Is there a capital "M" on there?

3 Q. Capital "M", yes.

4 A. "M" can sometimes be millions, it can
5 be thousands. I'm not sure how they were using
6 it. You go to the documents themselves.

7 Q. There's quite a difference between
8 273,000 and --

9 A. Certainly there's a difference. I
10 just took that as -- I read M as a million.

11 Q. Okay. In your prior analysis of this
12 waste, which one seems correct, 273,000 or 273
13 million gallons of decanter sludge?

14 A. I'd have to look at the documents
15 again. I don't know.

16 Q. I'll just give you my copy.
17 (Tendered.)

18 THE COURT: (Calculator
19 Tendered.)

20 THE WITNESS:

21 A. It's not as simple to figure up, as
22 it appears. Some of them are 4,000, some are
23 3,000 and there are a significant number here.
24 If I take the time to figure it accurately, it

1 would take me some time.

2 THE COURT: Is this a figure we
3 could produce overnight, for the
4 record?

5 MR. KREBS: I don't know. But I
6 think it's significant whether it's
7 thousands or millions.

8 THE COURT: Do you have any
9 objection to the calculation being
10 made over the night?

11 MR. KREBS: No, no.

12 MR. RADELL: Excuse me, Your
13 Honor. As part of the post-hearing
14 pleadings that were required to file,
15 namely, proposed findings of facts;
16 and I suggest that we wait until the
17 close of this hearing, and as part of
18 the Complainant's documents, submit
19 it at that time, that we recalculate
20 all these figures. Because it's
21 going to take some in-depth -- to try
22 to recalculate all those densities,
23 to get all that figures, I don't know
24 if Mr. Cooper, once we get out of

1 this trial, needs records of the
2 Agency that will be locked up and
3 won't be able to contact other
4 Agencies to get these records
5 concerning the things like the
6 density, which are very specific.
7 And we may -- I mean, no one may even
8 have that information at all.

9 THE COURT: Well, unless you
10 have made a stipulation, it's going
11 to have to be put in record before we
12 close it.

13 MR. KREBS: Your Honor, it's our
14 position that this information -- I
15 mean this is cross-examination.
16 We're entitled to get these answers.
17 If this witness has no idea, can't
18 calculate it, then that's fine. But
19 it not only goes to what the facts
20 are, but it goes to determine the
21 knowledge of this witness, how much
22 knowledge he really has to make these
23 calculations on fines; how much
24 knowledge he has as a witness on

1 behalf of the U.S. EPA, and the
2 weight which should be given to any
3 of his opinions here. So it's very
4 important that these things be
5 calculated. I have no problems with
6 waiting for tomorrow.

7 But I've been in cases, for
8 example, with Dr. West here, where
9 the State of Indiana has had him
10 calculate figures for four hours at a
11 time on the stand; and they were
12 important items. I mean, I didn't
13 object to it; because they were
14 things that needed to be determined.
15 And this is a significant factor.

16 THE COURT: There's no question
17 about that. I'm only trying to
18 determine what the best way of doing
19 it is --

20 MR. KREBS: I just --

21 THE COURT: -- and considering
22 the time.

23 MR. KREBS: I don't want to do
24 it by something that's going to come

1 in in a written form in some brief
2 later. It's our position that we
3 need these --

4 THE COURT: I have already ruled
5 that out.

6 MR. KREBS: Okay.

7 THE COURT:

8 Q. Now, Mr. Cooper, if you would tell us
9 what it is you need in order to make these
10 calculations -- I gather you need records that
11 aren't in the courtroom?

12 A. Well, if Mr. Krebs could be very
13 specific, that would be very helpful. I'm not
14 sure that we need to know the volume of F006
15 waste, what percentage that is of all of these
16 other wastes; or if we have a total volume of
17 K087, a total volume of calcium sulphate
18 sludge, a total volume of all of the others and
19 the F006. We removed the F006 from the volume
20 and we ended up with some volume that's some
21 percentage smaller than the original, because
22 we've removed F006. I mean, this gets
23 complicated, and I'd like to have it spelled
24 out to me, if I'm going to sit down tonight at

1 8:00 o'clock, when I get home, before I go to
2 bed --

3 MR. KREBS: Your Honor, I'm
4 going to ask the witness be instruct-
5 ed to cease his narrative and his
6 comments be stricken from the record.
7 It's totally improper. I've got this
8 witness on the stand in cross-
9 examination, and now he's giving an
10 opinion as to whether he should
11 answer a question or not.

12 THE COURT: Well, I asked him a
13 question as to what he needed, so
14 that I could attempt to determine how
15 long the calculation was going to
16 take and what period of time would be
17 required to produce it.

18 Q. I thought the question was whether
19 it's 273 million or 273,000. If that's the
20 question, I'm not sure I understand what's
21 going to take so long about it.

22 A. That wouldn't take that long to
23 figure it. I'm referring to the question that
24 was previous to this, regarding other volumes.

1 Q. The immediate question is whether
2 it's thousands or millions. Now, how long is
3 it going to take you to do that and what do you
4 need to do it?

5 A. Well, I'd have to sit down and just
6 add each one into the calculator and count the
7 number of three thousands and four thousands
8 and --

9 Q. Well, I don't see why we can't do
10 that after we recess and have the figure in the
11 morning. Can you do that?

12 A. Yes.

13 Q. Okay. You'll have the figure in the
14 morning?

15 MR. KREBS: Your Honor, I also
16 have -- I do have, as this witness
17 has directly pointed out, pending the
18 other questions on the volumes of the
19 US Lead waste and the Jones and
20 Laughlin sludge, F006.

21 THE COURT: Well, I think I
22 suggested that that be discussed with
23 his counsel at a later point.

24 MR. KREBS: I'll be happy to

1 give him, you know, any documents I
2 have, if that would assist him.

3 THE COURT: We need to answer
4 that question, and I don't want to
5 take time now on the stand to figure
6 out how it's going to be produced.
7 But I suggest that over the evening
8 recess, you figure out the best way
9 of getting it in; because I believe
10 we need to have it. In the meantime,
11 whether it's 273 million or thousand
12 will be given to us tomorrow morning.

13 Continue.

14 MR. KREBS:

15 Q. Mr. Cooper, how deep are the
16 monitoring wells presently located at this
17 facility?

18 A. I have never seen figures on depth.

19 Q. So, you don't know from what depth
20 that they are monitoring groundwater at this
21 facility?

22 A. No, I don't. In fact, the report
23 stated that the total depth was never given,
24 the report that we have submitted from Harding

1 and Lawson.

2 Q. Do you know whether or not the State
3 of Indiana had anything to do with the location
4 of those monitoring wells, being the Environ-
5 mental Agency?

6 A. I'm sure that the State of Indiana in
7 their 330 IAC program did have some input on
8 that.

9 Q. What about Karyl Schmidt -- you said
10 you know Karyl Schmidt -- is she the Chief
11 Geologist for the Department of Environmental
12 Management?

13 A. Yes, Karyl Schmidt is.

14 Q. Did she ever -- I'm sorry.

15 A. She's the Geologist Chief.

16 Q. Okay. Does she deal only with
17 sanitary landfills, 330 IAC 4; or does she also
18 deal with RCRA investigations?

19 A. I deal with her from RCRA. I don't
20 know that she deals with the other side or not.
21 I can't say one way or the other. I deal with
22 her under RCRA Regulations.

23 Q. Okay. Do you know whether there were
24 any borings done at this location, prior to the

1 facility being constructed in 1973 or 1974, and
2 submitted to the State of Indiana Environmental
3 Regulatory Agency?

4 A. I haven't seen those borings, that I
5 recall.

6 Q. Do you know whether any exist?

7 A. I don't know.

8 Q. Would it be significant, from the
9 standpoint of a geologist, to have that kind of
10 information and to know what the results of any
11 borings revealed?

12 A. Certainly, it would be significant.

13 Q. Yesterday you indicated one of the
14 documents which you relied upon in making your
15 evaluation of this site was this memorandum
16 which was Complainant's Exhibit Number 13, by a
17 Richard Jones to Stew Miller; is that correct?

18 A. How do you believe that I used that?

19 Q. Well, this is when, in fact, I asked
20 you if you knew any of the people on this, and
21 one name on here as Karyl Schmidt; and you
22 said, yes, you knew Karyl Schmidt. I think I
23 asked some questions, preliminary questions for
24 the purposes of an objection; and in connection

1 with this, I believe you said this was one of
2 the documents you relied upon in assessing the
3 potential harm of this site, potential threat.

4 A. This is the document which is one of
5 the ones which indicate that the borings --
6 well, the report shows that the thickness of
7 the clay is not as thick as it should be. That
8 factor was considered, yes.

9 Q. Okay. On the -- in the first
10 paragraph, the author, Mr. Jones, is discussing
11 his viewing the site December 16th, '85, with
12 other people and he says in the second
13 sentence, "We walked the entire site and
14 observed many leachate leaks. The west wall
15 had several small leachate leaks which drained
16 into a flooded ditch between Gary Land
17 Development and Vulcan Recycling Company. The
18 leaks occurred in the wall where proper clay
19 thickness was in question."

20 Now, looking at that statement and as a
21 geologist and listed as a hydrologist and
22 having been at this facility -- and we're
23 talking about this west side between the
24 facility and Vulcan Chemical -- can you

1 describe for me, looking at Mr. Jones' comments
2 there, how leachate could come from the slope
3 of the fill above ground and not from the clay
4 liner below it?

5 A. That could happen from natural
6 groundwater percolating through the clay liner.

7 Q. Okay. The clay liner is underground,
8 correct?

9 A. Are you talking about the wall?

10 Q. Yes.

11 A. Yes, my recollection on the site --
12 and as I said, I didn't get close enough to
13 this to observe any of what you're saying,
14 actually -- it could be at the time this
15 document was originated, the site was much
16 deeper. It may be it was not filled up as high
17 as it is now, when I was out there visiting
18 just a few days ago.

19 Q. On February 6th, 1986 on the west
20 side, you're saying you think that --

21 A. Well, this document talks about a
22 December 16th, 1985.

23 Q. Right.

24 A. I didn't walk around enough to

1 observe what you're trying to get me to testify
2 to.

3 Q. Okay. Let's assume, then, a
4 hypothetical. Assume that the west wall of
5 this facility is below ground -- because what
6 we have here is a site that used to be a gravel
7 pit, where all the gravel was dug out -- and
8 that there was a clay wall built on the west
9 side of this hole, as the hole was filled up in
10 that area, from the bottom of the hole up to
11 surface level. Now, let's assume that that
12 wall and that area was filled up to authorized
13 elevation, and when it was viewed in December
14 of 1985 by this geologist, and 20 feet higher
15 above the surface -- above the surface
16 elevation. Do you think that he could have
17 personally observed, quote-unquote, "The leaks
18 occurred in the wall where proper clay
19 thickness was in question," without digging
20 into the wall or into the material?

21 A. It doesn't appear likely. But I
22 believe that I would like to say that your
23 description to me of the situation is not
24 visual enough for me to be able to give you a

1 determination.

2 Q. Okay.

3 A. Obviously cores were taken; they're
4 described in here. Cores were taken,
5 presumably, from that wall you're describing;
6 is that correct, seems to be?

7 Q. That's correct?

8 A. So the wall must be available -- must
9 be visible in some manner. Or if it's covered
10 over, are the borings taken at an angle? There
11 are too many details here for me to -- too many
12 questions.

13 Q. Okay. Let's make it very simple.
14 Let's assume that -- I'm asking you as a
15 geologist -- let's assume that it says that the
16 other geologist was on the site, the wall was
17 below ground, covered up, no borings being
18 taken on that day, how in the world can he make
19 a statement that leaks occurred in the wall,
20 where proper clay thickness was in question,
21 unless he had x-ray vision?

22 A. Are you saying we have -- the wall is
23 covered, there's no --

24 Q. Yes.

1 A. -- higher elevation area nearby?

2 Q. Yes.

3 A. I don't know how he would have made
4 that determination.

5 Q. But he says he was seeing leaks in
6 the wall. I can't make any determination from
7 his words what he was observing. He would
8 probably have to be in the side slopes of the
9 fill, not in the wall, not to be visually
10 observable?

11 A. I would think that would be
12 reasonable, yes. Do we have a valley here? I
13 don't know what we're envisioning.

14 Q. On Exhibit 19, which was one of the
15 background documents which you were sponsoring
16 into evidence, you were discussing that the
17 document was based upon long-term, low-level
18 testing. Do you recall that phrase?

19 A. Yes.

20 Q. And how do you know it was long-term,
21 low-level testing done?

22 A. I don't know the specifics.

23 Q. Well, how do you know it was
24 long-term, low-level testing, if you don't know

1 how long term it was?

2 A. Well, long-term, low-level amounts of
3 concentrations in groundwater of toxics is the
4 concern. Scientific tests have to be much
5 shorter, because of time involved in reaching
6 conclusions on the toxicity of various
7 substances and determining which -- which
8 hazardous wastes need to be stated as hazardous
9 waste and given EPA numbers, there's a limited
10 amount of time. So, obviously, their research
11 is somewhat limited, but I'm not privy to the
12 length of time that each states.

13 Q. Okay. Complainant's Document Number
14 22, which I believe is the document related to
15 American Chemical Service waste, the letter
16 that was sent to you, you referenced a page two
17 of two in the document. Can you tell where
18 page one of two is?

19 A. It was either inadvertently not
20 copied, or it was all that was submitted to us
21 in the submittal from American Chemical
22 Services. That's the best answer I can give
23 you.

24 Q. It is apparently missing, page two,

1 if there's no page one?

2 A. Yes, it's missing.

3 Q. Is a certification on Document Number
4 22, Exhibit 22, is there a certification by the
5 signer?

6 A. No, there's no certification. It's
7 signed by Mr. Tarpo, the President of the
8 company.

9 Q. Okay. If wastes -- and I think you
10 may have answered this question indirectly,
11 when we were discussing something different,
12 but I want to make sure about that. If waste
13 is classified as D001 because of its
14 characteristic of ignitability and if it is
15 mixed with, let's say, sand for the purpose of
16 making it no longer ignitable, is that waste no
17 longer D001 waste?

18 A. That's my understanding to the
19 characteristic of ignitability, if that is the
20 only characteristic that material has.

21 Q. Right, right.

22 A. Now, that must be very clear.

23 Q. I agree.

24 A. If it's mixed with sand, it is no

1 longer ignitable; therefore, it is not listed
2 for ignitability.

3 Q. Okay. In connection with the
4 document which you sponsored from US Lead,
5 Complainant's Exhibit 23, when you discussed
6 tracking form, what is the difference between a
7 tracking form and a manifest?

8 A. Is that Number 23?

9 THE COURT: 23.

10 MR. KREBS:

11 Q. I believe so. That's that very large
12 one from US Lead.

13 My question is -- the reason I'm asking
14 the question is it at times refers to
15 manifests, for example, regarding J & L; and
16 when you testified regarding US Lead and you
17 started using the word tracking form. So I was
18 wondering what the difference was between these
19 types of forms.

20 A. Sure I can explain it. At this
21 point, evidently, in the State of Indiana that
22 these shipments were made, evidently there was
23 no standardized form issued to the generators.
24 For example in this case, USS Lead in using the

1 industrial hauler, Industrial Disposal
2 Corporation, that particular company,
3 Industrial Disposal Corporation, had its own
4 letterhead on what it called hazardous waste
5 tracking form.

6 Q. Right.

7 A. So all of the documents that we have
8 are just entitled that. The documents from LTV
9 Steel or J & L Steel, as I recall, have J & L
10 Steel and LTV Company; and that's the head --
11 that's what is printed at the top of the form.
12 And it may be entitled hazardous waste
13 manifest, I don't recall for sure.

14 Q. If I can have just a moment, I think
15 I'm about finish.

16 Mr. Cooper, did Mr. Jones, in reference to
17 the State Geological Section or Karyl Schmidt
18 or anybody with the Department of Environmental
19 Management, have they ever sent to you copies
20 of boring logs and permeability samples of core
21 material from the west wall of Gary
22 Development's facility done in 1985?

23 A. I don't specifically recall that.

24 Q. Do you recall a company by the name

1 of ATEC and Associates doing borings at all at
2 the landfill site?

3 A. ATEC is a name I'm familiar with; but
4 in relation to this site, I'm not sure. I just
5 heard the name.

6 Q. Okay. You mentioned your familiarity
7 on a couple of occasions with Karyl Schmidt,
8 Department of Environmental Management, Chief
9 Geologist.

10 A. Yes, I did.

11 Q. I think you've had communications
12 with her on other matters?

13 A. Yes.

14 Q. I would like to hand you a document
15 here and let's --

16 MR. KREBS: I probably should
17 mark it for identification, even if
18 we don't admit it. What's my next
19 number, do you know?

20 (Reporter Marks Respondent's Exhibit No. 5)

21 MR. KREBS:

22 Q. We've marked it Respondent's Exhibit
23 Five, and it's two pages and I'm referring to
24 the second page. Have you ever seen this

1 letter before, the letter from Karyl Schmidt to
2 Larry Hagen of Gary Development? (Tendered.)

3 A. I don't recall having seen this
4 document before.

5 Q. Okay. You mentioned that you worked
6 with Karyl Schmidt regarding groundwater
7 monitoring of RCRA facilities, is that correct?

8 A. I have.

9 Q. Is that one of her responsibilities?

10 A. Yes.

11 Q. Is she, in your opinion, the chief
12 person in the Department of Environmental
13 Management, in that technical area at the
14 point?

15 A. She's Chief of the Geology Section,
16 yes.

17 Q. And that's the section that handles
18 things like groundwater monitoring?

19 A. Yes.

20 Q. Okay. Now, the letter -- I'm not
21 sure. Did you say you have not seen or you
22 have seen this letter?

23 A. I don't think I've ever seen this
24 letter, to the best of my knowledge.

1 Q. Okay. Would it surprise you if Karyl
2 Schmidt had written Gary Development regarding
3 RCRA groundwater monitoring and indicated that
4 if they were qualified for interim status and
5 operate after November 19th, 1980, they would
6 have to do certain RCRA type requirements?

7 A. Would you repeat that question?

8 Q. Okay. Would it surprise you if Karyl
9 Schmidt, as Chief of -- presently Chief of the
10 Geological Section of the Department of
11 Environmental Management, have written Gary
12 Development a letter that if they had interim
13 status and if they had disposed of RCRA waste,
14 both after November 19th, 1980, then under
15 those conditions they would have to follow the
16 RCRA requirements, such as groundwater
17 monitoring, etc.?

18 A. I don't think that would be
19 surprising.

20 Q. Okay.

21 MR. KREBS: Your Honor, I would
22 like to offer into evidence a letter
23 which reveals on its face as to Gary
24 Development, Larry Hagen, Certified

1 Mail; from Karyl Schmidt, the Chief
2 Geology/Chemistry Support Section,
3 Division of Land Pollution Control,
4 State of Indiana. It is a certified
5 document. It's been certified by
6 Thomas L. Russell, as Hazardous Waste
7 Management Branch Chief of the
8 Indiana Department of Environmental
9 Management, certifying that this is
10 an accurate copy of a letter
11 appearing in their files; and it's
12 signed by him and it is notarized;
13 dated August 18th, 1987.

14 THE COURT: Have you seen this,
15 Mr. Radell?

16 MR. RADELL: Yes, I have; and I
17 have no objections to its admission,
18 Your Honor.

19 THE COURT: All right. Five is
20 received.

21 (Respondent's Exhibit No. 5 is Admitted)

22 MR. KREBS:

23 Q. Did you ever talk to Karyl Schmidt
24 about whether Gary Development had or didn't

1 have interim status?

2 A. No, I haven't.

3 MR. KREBS: Your Honor, I have
4 concluded at this time with my
5 cross-examination; but I would, for
6 the record, reserve questions related
7 to those volumes of waste which has
8 been discussed previously this
9 afternoon.

10 THE COURT: Mr. Krebs, I don't
11 seem to have an indication that we
12 admitted Number Four, which was a
13 part of N-53. It was offered, it was
14 marked.

15 MR. KREBS: Yes, it was offered.

16 THE COURT: I don't show it
17 having been admitted.

18 MR. KREBS: I don't think there
19 was an objection on that.

20 MR. RADELL: I haven't seen the
21 document.

22 MR. KREBS: 53? It's the N -- I
23 thought it was admitted, but I could
24 be wrong.

1 MR. RADELL: I don't have it in
2 my notes as admitted. Well, that's
3 probably why, because it was admitted
4 as an attachment already.

5 MR. KREBS: We offered this one
6 because the other page was
7 unreadable.

8 THE COURT: Yes, we needed this
9 because of the page. I presume
10 there's no objection.

11 MR. RADELL: I have no
12 objection.

13 THE COURT: Number four is
14 admitted.

15 (Respondent's Exhibit No. 4 is Admitted)

16 THE COURT: Well, Mr. Radell,
17 it's a quarter of 5:00. At this
18 point I think we need to assess
19 whether we will finish this matter by
20 the end of the day tomorrow. If so,
21 we will stay and work a little later
22 tonight and you will do your redirect
23 examination at this time. If it
24 looks as though we will not finish,

1 this is as good a time as any to end
2 for the day.

3 Mr. Krebs, what's your feeling
4 about the length of your case?

5 MR. KREBS: Well, I haven't
6 started it yet, so --

7 THE COURT: Well, you did start
8 it. We had one witness for you.

9 MR. KREBS: This is
10 cross-examination. We're still on
11 their case.

12 MR. RADELL: You had Mr. Broman.

13 MR. KREBS: Oh, I had Broman,
14 that was a quick one. I don't think
15 we're going to finish tomorrow. I
16 don't think there's any way we're
17 going to finish tomorrow.

18 MR. RADELL: My redirect will
19 take about 15 minutes; and I think it
20 would be much more cohesive if I just
21 did it now, as opposed to waiting
22 until tomorrow morning.

23 MR. KREBS: If I could, I'd like
24 to suggest something for the Court's

1 consideration or the Judge's
2 considerations. I have no objection
3 to them doing, you know, their
4 redirect. If it's that short, then
5 any recross should be short, too.
6 And I'd like to get on, if possible,
7 Mr. Tarpo, who's sitting here and has
8 been subpoenaed today and has been
9 here since about 3:30. I'm not
10 trying to keep us here all night; but
11 I have a feeling his testimony might
12 not be that lengthy, also. And if
13 that's acceptable, that will mean he
14 won't have to come back here and save
15 him -- he's about a half an hour from
16 here, so I know he'd probably rather
17 do it today than come back tomorrow.

18 THE COURT: Okay. Let's do
19 that, then. We'll have redirect;
20 we'll finish this witness now, with
21 the exception of the calculations
22 that's he's going to perform; and
23 we'll take Mr. Tarpo.

24 MR. KREBS: Thank you.

R E D I R E C T E X A M I N A T I O N

BY MR. RADELL

Q. Mr. Cooper, you testified earlier that you didn't know whether the Indiana State Board of Health had received U. S. EPA's notification of this action. Did U.S. EPA ever receive any objection from the State of Indiana to this action?

A. No.

Q. Okay. You also stated that information submitted in the Part A Permit Application might duplicate to some extent information requested -- or provided in a hazardous waste notification form. Was the Part A in this case received by August 18th, 1980?

A. No, it was not.

Q. So, even if it contained the same information, that information was not timely, regarding notification requirements?

A. Correct.

Q. You also referred to the background document -- excuse me, you also referred to -- discussed Hazardous Waste Number FO05 and its

1 listing. Does the background document for
2 listed waste K087 also contain information
3 regarding the listing of F005?

4 A. Yes, it does.

5 Q. I'm going to show the witness
6 Complainant -- excuse me, Respondent's Exhibit
7 Number Two, July 3rd, 1985 letter from American
8 Chemical Services to Mr. Guinn Doyle.
9 (Tendered).

10 Does that letter state that American
11 Chemical believes that the hazardous waste may
12 have been D001, instead of F005?

13 A. Yes. That's the way it's written,
14 "We believe D001 should have been used, instead
15 of F005."

16 Q. Does that letter state why American
17 Chemical believes that?

18 A. Well, there's no reasoning or
19 supporting analyses accompanying the letter.

20 Q. Does it provide any sampling analyses
21 or any sort of indication?

22 A. None whatsoever.

23 Q. Does this letter amount to a petition
24 to delist F005?

1 A. No, it doesn't.

2 Q. Does this letter in any way -- did
3 this letter in any way result in such a
4 delisting, to the best of your knowledge?

5 A. No, it didn't.

6 Q. If the waste may be either D001 or
7 F005, do the regulations provide that it would
8 be classified as one or the other, if it meets
9 the requirements for both of them? In other
10 words, does one classification take precedence
11 over another?

12 A. Yes. The most specific classifica-
13 tion is the one to use. In this case ignitable
14 is a very general classification. The more
15 specific classification is to call it F005,
16 based on the constituents such as Toluene or
17 Methyl Ethyl Ketone, which could be included
18 within the waste.

19 Q. So that even if this waste could be
20 classified as D001, if it could also be
21 classified as F005, under the regulations it
22 would be classified as F005?

23 A. Yes. You use the most specific
24 classification available.

1 Q. I'm going to show the witness
2 Respondent's Exhibit Number Three, the June
3 18th, 1982 letter from U.S. EPA, Region V,
4 William Miner to Mr. Lawrence Hagen of Gary
5 Development Company. (Tendered).

6 Does that letter, specifically the end of
7 that letter, provide Gary Development Company
8 the opportunity to respond to that letter or to
9 send in any inquiries?

10 A. Yes, it does.

11 Q. Okay. Did Gary Development Company
12 ever respond to this letter, based upon your
13 review of the file?

14 A. Not that I'm aware of.

15 Q. Did Gary Development Company ever
16 request to enter into such a compliance order,
17 which would have allowed it to have interim
18 status?

19 A. Not that I'm aware of.

20 Q. Did U.S. EPA and Gary Development
21 Company ever enter into such a compliance
22 order?

23 A. No.

24 Q. I'm going to show the witness

1 Complainant's Exhibit Number Three, the
2 February 8th, 1984 letter to Mr. John Kyle from
3 Mr. Carl Klepitsch, U.S. EPA, Region V.
4 (Tendered).

5 Did this letter predate the referral of
6 the enforcement action from the State of
7 Indiana to U.S. EPA?

8 A. Yes, it does.

9 Q. What -- do you remember the date of
10 the referral from the State of Indiana to U.S.
11 EPA?

12 A. October 22nd, 1985.

13 Q. This letter refers only to Hazardous
14 Waste Number F005, I believe you testified to
15 that earlier?

16 A. Yes.

17 Q. So, is it possible that U.S. EPA may
18 not have referred to other wastes, because it
19 had not received information concerning other
20 wastes?

21 MR. KREBS: Objection, Your
22 Honor. The question asks for a
23 conjecture on this witness' part, "is
24 it impossible," and it's leading. Is

1 it possible that U.S. EPA, whoever
2 that was, may have thought this.

3 THE COURT: It was certainly
4 leading, Mr. Radell. You may put it
5 in another manner.

6 MR. RADELL:

7 Q. Does this letter show -- does this
8 letter refer to any other hazardous waste,
9 other than F005?

10 A. No.

11 Q. Do you know of any reasons why it may
12 not?

13 A. It's possible that the question of
14 other wastes has not been raised at that point.

15 MR. KREBS: Object. The
16 question was, does this witness know
17 why it didn't refer to it.

18 MR. RADELL: I said does he know
19 of any reason.

20 MR. KREBS: I agree and that
21 asks for knowledge; and his response
22 starts off, "it's possible that,"
23 which means it's going to be total
24 conjecture upon this witness' part.

1 If he has knowledge, fine. If he
2 don't have knowledge, then he doesn't
3 have knowledge.

4 THE COURT: Well, I think the
5 response can be given by this
6 witness; and if it doesn't sound
7 reasonable, I will not base anything
8 on it. You may answer the question.

9 THE WITNESS:

10 A. I'd better look at the document a bit
11 more and I'll answer it in a minute.

12 First of all, the letter begins with a
13 request from Gary Development to be removed
14 from the Federal Hazardous Waste Management
15 System. It says, "Based upon the information
16 you have supplied, plus other information
17 available to this office, the facility is
18 required to have a Resource Conservation and
19 Recovery Act permit, and it may not be
20 withdrawn."

21 Evidently, the issues raised, when this
22 letter was addressed, must have been referring
23 only to the F005 waste; because that is what
24 was investigated and that's what was discussed

1 in the last paragraph on this page. Evidently,
2 some research was done to the facility of
3 American Chemical Services and in processing
4 what waste might be associated with that.

5 Q. I'm going to show the witness what
6 has been introduced as Respondent's Exhibit
7 Number Four, the consent order between the
8 State of Indiana and Gary Development Company,
9 and which I'm using the attachment to our
10 previous exhibit which is the same. I'm
11 referring him to page seven. (Tendered).

12 Paragraph 8(b)(4) of that document, does
13 that refer to waste which are being agreed upon
14 are not hazardous waste?

15 A. Yes, it does.

16 Q. Is K087 -- excuse me. That does not
17 list any specific numbers. Are any of the
18 wastes there classifiable as K087?

19 A. No. Decanter tar sludge is not
20 mentioned and the coking operation is not
21 mentioned.

22 Q. Do you see paragraph 8(a)?

23 A. Yes.

24 Q. Could you read the last sentence of

1 paragraph 8(a)?

2 A. Beginning with "the parties --"

3 Q. Yes.

4 A. "-- specifically agree that no
5 'hazardous waste', quote-unquote, as defined
6 and identified in 320 IAC 4-3 (1982, Cum.
7 Supp.) (hereafter called 'RCRA hazardous
8 waste'), shall be deposited at Petitioner's
9 landfill after the effective date of this
10 order."

11 Q. Thank you. Could you please see the
12 effective date of that order and tell me what
13 it is.

14 A. Would it be the date that it is
15 signed, on February 18th or 13th of 1982, by
16 this Technical Secretary?

17 Q. I would imagine. I don't know.

18 THE COURT: It appears to be
19 1983.

20 MR. KREBS: It's '83. Is there
21 a question pending? I'm lost.

22 MR. RADELL: I asked him to
23 identify the date that this document
24 was signed.

1 THE COURT: He responded, and I
2 don't believe his --

3 MR. KREBS: Just a point of
4 clarification, there are several
5 dates on that document, because it
6 was signed by different people on
7 different dates; but I think the last
8 date is February 18th of '83.

9 MR. RADELL: Okay, then, that
10 was the effective date?

11 MR. KREBS: I don't know if it's
12 that or not.

13 MR. RADELL: Okay.

14 Q. And who signed it on February 18th,
15 '83, who was the last one who signed it?

16 A. Ralph Pickard, Technical Secretary.
17 Indiana Department -- Indiana Environmental
18 Management Board.

19 Q. Do you recall in what years the
20 alleged disposal of hazardous waste that formed
21 the basis of this action took place?

22 A. Principally, in 1981.

23 Q. If the wall that is required by this
24 order were constructed as-is, what sort of --

1 how would that affect waste that had been
2 disposed of two years prior -- disposed of two
3 years prior to the building of that wall?

4 A. Unless excavation was done to reach
5 some level where the permeability was very low,
6 and if a wall were going to be constructed in a
7 location to address the problem, if excavations
8 were done into the lower layer of clay and then
9 were constructed as designed from there on up,
10 then that would have been appropriate and might
11 have been effective. I'm not sure how this
12 wall was constructed, if it was constructed on
13 refuse or ground.

14 Q. Okay, well, that's sufficient.

15 Would it be possible for leachate -- or
16 for any hazardous constituents or any material
17 at all to have leached from where the hazardous
18 waste was deposited, beyond where the wall is
19 to be constructed, within that two-year time
20 period?

21 A. Yes, it's very possible.

22 Q. Okay. You testified earlier that you
23 do not know of any EPA actions against the
24 Vulcan Company or Vulcan Products -- I can't

1 remember the exact name of the company.

2 A. I'm not aware of any.

3 Q. Are you aware of any private actions
4 brought by Gary Development Company, under any
5 citizenship provisions of RCRA or any other
6 hazardous waste statute against Vulcan for
7 polluting its site?

8 A. I'm not aware of any.

9 Q. Is the Gary Development Company
10 facility, based upon your knowledge of it,
11 divided into discrete units or cells that are
12 separate from one another?

13 A. It appears that they spread refuse in
14 one area to a considered height; and then
15 they'll move to another area and spread refuse
16 out there to a certain height; and covered it
17 with, at the end of the day, with their clay.
18 But as far as having a discrete hazardous waste
19 designated area, 200 feet -- 208 feet by 208
20 feet, it's not clear where that location is,
21 anymore. The whole thing is mounded up. Maybe
22 it could be pointed out to you, but it's not
23 clear that there is any special place for
24 hazardous waste disposal.

1 Q. Are you aware of any barriers at all
2 between -- well, that would divide it into
3 units, like any walls of clay or other
4 barriers?

5 A. Internally, I don't know of any. I
6 know around -- evidently, on the west wall, it
7 sounds as though there were not -- it was not
8 the same placement of a wall along the south;
9 and the east side, it's not like the walls were
10 concentrated on the west side.

11 Q. Before, earlier, you testified
12 about -- well, I'm not exactly sure if you're
13 aware of -- I think there were 22 inspections
14 by the State of Indiana in 1984, saying that
15 they complied 90 percent of the time. Would
16 those -- that compliance with these standards
17 in 1984 affect any migration of hazardous waste
18 constituents prior to 1984?

19 A. No. The state of the inspection at
20 the site there, the inspection in '84, would
21 not necessarily have any bearing on the
22 previous three years.

23 Q. Okay. I'm going to show the witness
24 the Complainant's Exhibit Number 22, the

1 response by American Chemical Service to EPA's
2 RCRA 3007 request. (Tendered).

3 Could you please turn to the signature
4 page of that document. You testified earlier
5 with Mr. Krebs that you did not see any
6 certification on that last page. Could you
7 please re-examine the last paragraph of that
8 letter and review it. Does that amount to any
9 sort of certification?

10 A. Yes, this does. I was thinking, when
11 I answered his question, in relation to some
12 kind of seal on the certification of the
13 document. This certification was read and
14 signed by Mr. James Tarpo; saying that under
15 penalty of law, I have personally examined
16 materials and so on.

17 Q. Okay.

18 MR. RADELL: I have no further
19 questions.

20 THE COURT: You may recross,
21 Mr. Krebs.

22 MR. KREBS: Thank you.

23 R E C R O S S - E X A M I N A T I O N

24 BY MR. KREBS

1 Q. Mr. Cooper, do you know when the west
2 wall, as it presently exists at this facility,
3 was physically constructed, during what period
4 of time?

5 A. I can't put time limits on it, no.

6 Q. Okay. You were talking about there
7 could be hazardous waste which could have
8 leaked in a two-year timetable. What timetable
9 are you talking about?

10 A. In our discussions, we were talking
11 about Cause Number N-53, requiring walls to be
12 built in certain -- with certain specifica-
13 tions; and the question was raised as to what
14 the prior condition was, what type of wall was
15 used before. If the State is specifying that
16 certain conditions be met in construction of a
17 wall, we don't know what the previous
18 conditions were of a wall, if one was
19 constructed at all.

20 Q. Okay. What's the two-year timetable
21 that you referred to? I don't think I under-
22 stand what two years that is. Now, are you
23 talking 1980, 1981? What years are you --
24 what's the two years?

1 A. I believe I said three years. But we
2 were talking in the period from 1980 until
3 1984 -- or you could say four years -- until
4 the wall was constructed as designed and
5 required in Cause N-53.

6 Q. Okay, the west wall?

7 A. Any walls. The west wall is fine, if
8 you want to talk about that.

9 Q. The question was related to the west
10 wall.

11 A. The water could flow in any
12 direction, laterally. We were discussing the
13 west wall, because that seems to be the wall
14 which was raised commonly in the memos.

15 Q. But you don't know whether the west
16 wall existed or not in 1983?

17 A. I expect there was a wall there, but
18 it was not constructed according to
19 specifications that the State wanted Gary
20 Development to construct it with.

21 Q. And you're referring to the
22 specifications set forth in N-53?

23 A. Yes.

24 Q. The document that you look at

1 regarding the 5 times 10 to the -6?

2 A. It's specified in there. It might be
3 specified in other previous documents.

4 Q. Okay. You indicated you weren't
5 aware of any citizen suit by Gary Development
6 against Vulcan Chemical?

7 A. That's right, I did.

8 Q. By that response, are you saying you
9 just don't know; or are you saying there have
10 been no suits by Gary Development against
11 Vulcan Chemical, over its leaking of water onto
12 Gary's site?

13 A. I know there's been a dispute and
14 there's been some discussion. Gary has alleged
15 that Vulcan Materials, if that's the correct
16 name, there has been some leachate pouring from
17 there. I've read those allegations. In
18 attempts to determine if that's the case, I
19 haven't seen the document. I'm just saying I
20 don't know if the document exists, saying that
21 action was taken against the company.

22 Q. Against Vulcan?

23 A. Yes.

24 Q. Regarding the landfill, when you were

1 out there the other day on your visit -- was it
2 April -- or August 27th of this year?

3 A. Correct.

4 Q. How long did you spend at the site?

5 A. I spent about three, three and a half
6 hours, I believe.

7 Q. Did you walk the facility?

8 A. We were driven around parts of the
9 facility by Mr. Hagen.

10 Q. Okay. Is -- based upon your viewing
11 the facility there, are there certain areas of
12 disposal -- certain areas where waste has been
13 disposed at the site, which are not contiguous
14 with other areas?

15 A. There are -- there is a valley-like
16 structure that runs through a portion of it. I
17 don't know the purpose of that. But otherwise,
18 the areas, you can get from one area to the
19 other by going around that valley; from what
20 I've seen, that seems to be the case. So, that
21 it's really contiguous, if it's divided by a
22 valley.

23 Q. It's divided by a very deep type of
24 valley in the site?

1 A. Yes.

2 Q. How deep would you say that is from
3 top to bottom?

4 A. I would estimate it to be 35, 40
5 feet, just as a guess.

6 Q. Okay. And what would you estimate
7 the width of that valley to be, and I realize
8 you're just making an estimate?

9 A. Yeah, it pitches out; and if I'm
10 mistaken, in the center or at some point, it
11 seems to be kind of V'd out is my recollection
12 of it. The width --

13 Q. Give us a range, then, you know,
14 between such and such; from a narrow width to
15 the widest one.

16 A. Perhaps zero to a hundred feet.

17 Q. Okay.

18 A. I didn't have a diagram at the time.
19 I wasn't checking specifically for those
20 details.

21 Q. Regarding the -- you answered the
22 question in your answer related to -- you gave
23 an answer, you talked about the south and east
24 walls of the landfill. How do you know that

1 the south and east walls are not constructed in
2 the manner as the west wall?

3 A. I don't know that that's the case,
4 except that I just thought that there might be
5 a difference, because of the reference that you
6 made as to the south and the east walls being
7 left and not addressed as the ones -- the west
8 wall is addressed, specifically, and the south
9 and east walls were left not addressed by Cause
10 N-53.

11 Q. Okay. So you -- I guess what you're
12 saying is, you're not -- you're surmising that
13 perhaps the south and the east walls weren't
14 constructed in the same manner as the west
15 wall, but you really don't know?

16 A. Yes. That's just a guess that
17 perhaps it was agreed that the -- perhaps, that
18 the removal of the waste of the constructed
19 wall, to meet the standards specified by the
20 west wall, might have been too much of an
21 effort. I don't know what the agreement was
22 reached with by the State and Gary Development.

23 MR. KREBS: That's all of my
24 recross, Your Honor.

1 THE COURT: Thank you. Any
2 further?

3 MR. RADELL: No, Your Honor.

4 THE COURT: Well, Mr. Cooper,
5 this is it. You get to leave the
6 stand. But you'll have to come back
7 tomorrow with your calculations about
8 a million or a thousand.

9 THE WITNESS: Thank you, Your
10 Honor.

11 THE COURT: And you're charged
12 with conferring with counsel over the
13 best way to remove the F006 from the
14 penalty calculation, assuming it
15 would be removed -- I mean assuming
16 that there would be a difference in
17 the amount with that removal.

18 MR. RADELL: We intend to
19 address that. It was an oversight on
20 our part not to have done so before
21 this proceeding.

22 THE COURT: Okay. Then that
23 concludes your case, except for those
24 two items?

N O T E S

1 MR. RADELL: Yes, it does;
2 except that at the end of the
3 proceedings, I would like to make a
4 closing.

5 THE COURT: Yes, I understand.
6 Mr. Krebs, your witness?

7 MR. KREBS: Is that the
8 conclusion of their case, except for
9 those two pending items?

10 THE COURT: Yes.

11 MR. KREBS: We would call
12 Mr. James Tarpo.

13 JAMES TARPO, JR.,
14 having been first duly sworn, was examined and
15 testified as follows:

16 D I R E C T E X A M I N A T I O N

17 BY MR. KREBS

18 Q. Would you state your name, please.

19 A. It's James Tarpo, Jr.

20 Q. And what is your occupation and
21 business address?

22 A. My occupation is President of
23 American Chemical, and the address is 420 South
24 Colfax, Griffith, Indiana.

1 Q. And how long have you been President
2 of American Chemical?

3 A. Precisely eight years.

4 Q. Okay. And can you give us, just
5 briefly, any of your educational background?

6 A. I have a B. S. Degree in Chemistry
7 from Purdue, which I got in 1959. I was
8 employed by U. S. Steel for approximately seven
9 years, and then I came to American Chemical. I
10 was there as Chemist, Plant Manager, and then
11 later as President.

12 Q. Okay. What kind of work did you do
13 for U.S. Steel?

14 A. I was an Analytical Chemist and I
15 worked as a Supervisor in a production facility
16 there.

17 Q. Okay. And as an Analytical Chemist,
18 what were your responsibilities with U.S.
19 Steel?

20 A. It would be to analyze the various
21 products that they manufactured and to monitor
22 the processes, to do environmental work. The
23 early environmental work was done in the middle
24 60's.

1 Q. Did you actually do the bench-type
2 chemical analyses yourself?

3 A. Yes, I did.

4 Q. And working in a laboratory
5 atmosphere?

6 A. Yes.

7 Q. Okay. And have you done laboratory
8 chemical analyses work since you've been at
9 American Chemical?

10 A. Yes, I have.

11 Q. Okay. Mr. Tarpo, in front of you are
12 a few exhibits which have already been offered
13 into evidence; and the first one is marked as
14 Respondent's Exhibit One, and I'd like you to
15 look at the second page of that document, and
16 ask you if you're familiar with that document,
17 which indicates it was written to you by
18 Mr. Guinn Doyle?

19 A. Yes, I am.

20 Q. Okay. And did you receive the
21 original of that letter?

22 A. Yes, I have it.

23 Q. And in that letter, is it correct
24 that Mr. Doyle was requesting that you send him

1 information regarding waste that you may have
2 shipped to American Chemical Services;
3 specifically, 33 shipments?

4 A. To Gary Development.

5 Q. I'm sorry, to Gary Development. I've
6 had a long day.

7 A. Yes.

8 Q. Yes, okay. And did you respond to
9 that letter?

10 A. I did. I sent him the copies of the
11 manifests, and there were some statements in my
12 letter that had been discussed.

13 Q. Okay. Let me hand you what's been
14 admitted as Respondent's Exhibit Two, and ask
15 you if that appears to be a correct copy of
16 your response letter that you sent to
17 Mr. Doyle? (Tendered.)

18 A. That's correct.

19 Q. That doesn't have the attachment,
20 correct?

21 A. That's right.

22 Q. The attachment would have been
23 manifests?

24 A. They were copies of the actual

1 manifests that the material had been shipped
2 in.

3 Q. Okay. Thirdly, I'd like to show you
4 a document which has also been admitted into
5 evidence as the EPA Complainant's Exhibit 22,
6 and ask you if you're familiar with that
7 document? (Tendered.)

8 A. Yes, I am.

9 Q. And is this a letter written and
10 signed by you and sent to Mr. Cooper of U.S.
11 EPA, regarding waste that American Chemical
12 sent for disposal to Gary Development?

13 A. That's correct.

14 Q. Okay. And does that appear to be a
15 correct copy of that letter?

16 A. Yes.

17 Q. Okay. In the letter you're
18 indicating in general or basically that waste
19 that was manifested to Gary Development as F006
20 should have been manifested -- I'm sorry,
21 F005 -- should have been manifested as D001; is
22 that correct?

23 A. That's correct.

24 Q. And why did you reach that conclu-

1 sion?

2 A. At some point later after the period
3 of time, maybe a year or two later, we
4 discovered that we had been classifying mixed
5 solvent waste under a listing code which was
6 set aside for pure solvents and not for the
7 solvent mixtures. The companies that we dealt
8 with were using cleaning solvents, and they
9 were shipping them to us spent. So the
10 resulting waste that was being shipped to us
11 was not a F-listed waste; and in reality, it
12 was a D001 waste. Also, much of the waste was
13 a paint waste, there was a residual paint. We
14 would get thickened or solidified paint from
15 those people, and they would ship it along with
16 the regular material that we would get for
17 reclamation.

18 Basically, what we did early on is we
19 operated from the Federal Register, and there
20 was some ambiguity in the F005 listing. It was
21 not actually corrected until a year ago. It
22 was the intent of the EPA for mixtures to be
23 classified as hazardous for ignitability,
24 unless the pure components in the F005 category

1 were generated separately and commingled. This
2 is a little complicated, but -- how can I
3 explain it to you, let's see? You can have an
4 identical waste with the same composition, that
5 can have two different classifications. It can
6 be a D001 or it can be an F005. Now, this is
7 pre-1986, basically.

8 We knew the source of the generation of
9 our material. We knew that it had been
10 generated by paint materials and solvents that
11 we had shipped to customers; who had cleaned
12 equipment, and then shipped back to us. And we
13 were not aware of that until probably sometime
14 in 1984, that that was the situation. I think
15 possibly the EPA didn't realize it until a lot
16 later, that this was kind of an ambiguity in
17 the law.

18 And I hate to disagree with Mr. Cooper,
19 but at that point the mixture rule was not in
20 effect. The composition of the waste stream
21 didn't determine the waste code. That wasn't
22 until several years later. The commingling
23 regulation was in effect, though. If the
24 generator had used a pure solvent listed in

1 F005 and commingled it with another waste, then
2 it, in effect, would have been an F005 waste or
3 F005/D001 waste.

4 But there were circumstances that caused
5 us to do a very serious search of this in about
6 1983, and we made accurate determinations on
7 what the waste was, based on the incoming
8 manifest data that we had. And it is our
9 belief that the waste generated in '80 and '81
10 was also a D001 waste.

11 Q. Okay.

12 A. So, on that basis, we believe that
13 the material is a D waste.

14 Q. Now, you mentioned the mixture rule
15 was not in effect back at that time.

16 A. That's correct.

17 Q. What do you mean by that, what's the
18 mixture rule?

19 A. The mixture rule is, you can tell if
20 a waste is a listed waste by analyzing the
21 components within the waste.

22 For instance, let's see if I can give you
23 an example, okay. The origin of a D001 waste
24 is a waste -- now, this is pre-1986 we're

1 talking -- a D001 waste is a waste that's not
2 specifically mentioned in one of the listings.
3 And the listings would be the F and the U
4 listings. Okay, what the regulations said that
5 you had to do was go to all the listings and
6 see if your waste was in there, okay. Now, if
7 it wasn't in there, then what you had to do is,
8 you had to look at the characteristic of the
9 waste, whether it were ignitable, corrosive or
10 toxic, I think is what the other one is. When
11 we looked in the listing, we saw what we
12 thought was our waste. Can I read from this
13 or --

14 Q. Certainly, if you brought documents
15 there.

16 A. Okay. This is a copy out of the
17 Federal Register. It describes an F005 waste
18 as the following spent, non-halogenated
19 solvents: Toluene, MEK, etc., there are a
20 number of other ones.

21 When we saw this in 1980, we thought that
22 that meant those compounds in mixtures; and we
23 didn't realize until sometime in 1983 that that
24 listing was specific to those compounds used in

1 their pure form and generated as bi-products.

2 In other words, if you had a mixture of
3 all of these listed wastes and you had material
4 that was not a hazardous waste, let's say you
5 had all of these components in it and it was a
6 solvent; and you used it, say, to clean
7 something up and you contaminated it, the
8 material would not be a listed waste. Because
9 when you would go to the regulations, it was
10 not specifically one of those things; it was a
11 mixture.

12 That when we looked at that and saw the
13 commas in between the words, we thought it was
14 that that meant mixtures of those wastes; but,
15 in effect, that isn't what it meant. It meant
16 those solvents in their pure form that
17 generated a hazardous waste.

18 All right, that was our rationale for
19 calling it an F-listed waste; and we think
20 that's been born out by the fact that the
21 regulations have been changed in the last year
22 and a half. Apparently, it was thought that
23 that was an ambiguity -- or, no, a loophole in
24 the law; and now the regulations are based on a

1 percentage basis. In other words, you can take
2 the waste and if it's got -- I forgot the exact
3 percentages -- 10 or 15 percent, it then
4 becomes a listed waste. But at that point in
5 time in 1981, it was not a listed waste in our
6 feeling.

7 It's a little complicated, but it's not
8 that complicated. The components are listed
9 separately, and it was intended that wastes
10 generated from the use of those materials
11 separately were hazardous wastes. Also, the
12 commingling of those wastes, generated in their
13 pure form, would generate a listed hazardous
14 waste. However, the generation of a waste is
15 in a mixture where none of the components was
16 generated separately is a D001 waste; and the
17 paint -- the waste paint, which is what appears
18 on our manifests, is still a D001 waste, which
19 is a further ambiguity which hasn't been
20 cleaned up.

21 In other words, today you could have a
22 waste that looks like a paint that could be a
23 D001 waste, if it were a paint. It could have
24 the identical components and have been

1 generated by the clean-up of a paint with a
2 solvent, and it would be a listed waste, okay.
3 So, I'm fairly certain that it was not an
4 F-listed waste, that it was a D001 waste.

5 A lot happened after that. There's a lot
6 of documentation after that, but not during
7 that period. So, basically that's --

8 Q. And that, I assume, is what you based
9 your opinion on and conclusion, when you
10 authored your letter to Mr. Doyle of the
11 Department of Environmental Management and also
12 to Mr. Cooper of U.S. EPA?

13 A. That was -- that was primarily the
14 primary part of it, that was what it was based
15 on.

16 Q. Okay. Did you ever have any
17 discussions with any representative of U.S.
18 EPA, Region V, as to whether this waste should
19 be listed as F005 or D001?

20 A. Not this specific -- not during this
21 specific time period. But after that time
22 period, in discussions with the Region V
23 Inspector, he advised me that we were
24 mis-coding the waste as an F-listed waste. It

1 should more properly be categorized as a D001
2 waste.

3 Q. And you were informed of this by an
4 U.S. EPA Inspector?

5 A. Yes.

6 Q. Would that be a Richard Shandross?

7 A. That's correct.

8 MR. KREBS: I pass the witness
9 at this time, Your Honor.

10 THE COURT: Mr. Radell.

11 MR. RADELL: Yes.

12 C R O S S - E X A M I N A T I O N

13 BY MR. RADELL

14 Q. Mr. Tarpo, you've been President of
15 the American Chemical Company for about eight
16 years?

17 A. Yes.

18 Q. Would that put it back in like '79,
19 when you became President?

20 A. Maybe 10 years, 10 or 11 years.

21 Q. Time flies. Since you've been
22 President, have you yourself done any of the
23 analytical chemical sampling analyses, as
24 performed at your company?

1 A. No.

2 Q. So, since November 19th of 1980, you
3 personally have not been involved with the
4 actual testing of any waste or other substances
5 handled at your facility?

6 A. I haven't done them myself, no.

7 Q. Have you personally reviewed these
8 tests?

9 A. Yes, I have.

10 Q. Okay. When waste -- let's -- these
11 questions will apply to the time period, say,
12 in the years 1981 and 1982.

13 A. Okay.

14 Q. When waste came into your facility,
15 were they identified in manifests coming to
16 your facility, were they classified as
17 particular types?

18 A. Yes, they were.

19 Q. Were the wastes in questions that
20 eventually ended up at Gary Development Company
21 classified in any way?

22 A. Yes.

23 Q. How were they classified?

24 A. They were classified with the hazard

1 codes that we were authorized to accept, D001,
2 F003 and F005.

3 Q. Did the company, American Chemical
4 Services, ever -- did you test the waste after
5 they came in, to see whether or not they, in
6 fact, were the waste as manifested?

7 A. Of course I couldn't verify that by
8 the testing, you understand. I could not
9 verify the hazard code of a waste by testing it
10 in 1982, that was not possible. It also was
11 irrelevant to the treatment at that point. It
12 wasn't totally irrelevant, though, but it
13 was -- it was irrelevant for our -- the
14 treatment within our facility. But I was not
15 able to verify the hazard code by any testing
16 at that point. That would have to be done in
17 another manner.

18 Q. Okay.

19 MR. KREBS:

20 Q. I'm sorry. You said that would have
21 to be done what?

22 A. That would have to be done in another
23 manner.

24 Q. Okay.

1 MR. RADELL:

2 Q. When did -- I believe that you said
3 that it was because of some technology, that we
4 couldn't identify it. When did American
5 Chemical Service attain the technology or the
6 ability to test incoming waste, to determine
7 whether they were listed hazardous waste?

8 A. I don't think I said we didn't have
9 the ability.

10 Q. Oh I'm sorry. I thought you said you
11 couldn't determine it.

12 A. We couldn't determine it, because it
13 can't be determined by testing -- it couldn't,
14 during that period, be determined by testing.

15 Q. I don't understand. Why during that
16 period; why has it changed since then?

17 A. You understand why it's changed?
18 Because now there is a mixture rule in effect.
19 If the listed compounds appear in the waste
20 stream of a certain concentration, regardless
21 of the type of generation, it becomes a listed
22 waste, okay. So, the mere presence of the
23 compounds means that it is a listed waste.
24 During that period, there was no -- there were

1 no regs like that.

2 Q. Could you cite those regs,
3 specifically, that corrected this?

4 A. They are called a mixture rule. I
5 think Mr. Cooper would -- I think he knows --

6 Q. So, you're referring generally to the
7 mixture rules, when you say the regs in effect?

8 A. Yeah. There are two things. There's
9 the commingling rule and there's the mixture
10 rules. You don't want to confuse those. The
11 commingling rule was in existence from the
12 beginning; but the mixture rule, it appears, I
13 don't know, sometime within the last year or
14 two. I know it has Porter's name on it, so
15 it's got to have been within his time period.

16 Q. Did American Chemical Services ever
17 seek to amend its manifests, within the time
18 frame provided in the regulations for amending
19 manifest, for any possible inaccuracies for
20 these manifests that occurred in that time
21 period?

22 A. No. We did amend our Part A, though.

23 Q. Okay. You personally answered the
24 information request, that U. S. EPA request?

1 A. Yes.

2 Q. Did that information request ask you
3 to submit any -- the reasons for your
4 determination that this may or may not have
5 been listed?

6 A. I believe it did.

7 Q. Why did you not submit these tests
8 that you have done, I believe it was in 1982 or
9 1983, with your information request?

10 A. I didn't say that. I said that the
11 tests would not allow me to determine the
12 hazard code; that's what I said in my letter.

13 Q. But since --

14 A. You asked me if I could determine the
15 hazard code by my analyses. I told you I
16 couldn't determine that.

17 Q. Even to this day you still could not?

18 A. Today I could determine hazard codes
19 by analyses.

20 Q. Because the regulations have changed?

21 A. The regulations have changed.

22 Q. Okay, okay. Have you in fact made
23 those determinations, have you done this sort
24 of test that would make those determinations?

1 A. Yes.

2 Q. Why didn't you submit those tests and
3 information requests?

4 A. Those tests were only required after
5 1986, I believe.

6 Q. Only acquired after 1986?

7 A. Required after 1986.

8 Q. So, you didn't perform these tests
9 until 1986?

10 A. We didn't -- we didn't perform -- no,
11 we didn't perform which tests, tests to
12 determine what the hazard code was?

13 Q. Yes.

14 A. Why would we perform tests to
15 determine what the hazard codes were, when
16 there was no way we could determine it by the
17 tests? You see what I'm saying?

18 Q. I thought you said under the current
19 regulations you could.

20 A. Under the current regulations I can
21 now determine it.

22 Q. But you just see no reason to do
23 that; because, in your opinion, the regulations
24 speak for themselves?

1 A. No, if you asked me today to produce
2 the tests, I will do that. But you can't ask
3 me why didn't I do it in whatever year it was,
4 because it wasn't the regulation then; and I
5 didn't have the test to prove whatever.

6 Q. I understand.

7 A. You see what I'm saying?

8 Q. Yes.

9 A. You asked me to produce data that
10 would verify what the hazard code was.

11 Q. Since that waste is long gone, you
12 haven't tested it?

13 A. No, it isn't that. I could not
14 produce any data to verify the hazard code.

15 Q. Okay, okay. Are you aware of any
16 delisting of any of the waste that came in at
17 that time, in the relevant time period, the
18 FO05 waste that came in and which you
19 manifested and sent out as FO05 waste? Are you
20 aware of any delisting petitions concerning
21 that waste?

22 A. No.

23 Q. Okay.

24 MR. RADELL: I have no further

1 questions.

2 THE COURT: Mr. Krebs.

3 MR. KREBS: I have no redirect,
4 Your Honor.

5 THE COURT: Okay. All right,
6 now --

7 MR. RADELL: Your Honor, may I
8 ask one last question?

9 THE COURT: On your cross?

10 MR. RADELL: On cross.

11 THE COURT: You may.

12 MR. RADELL:

13 Q. You referred that you had discussions
14 with an EPA inspector who informed you of that.
15 Is there any documentation of those
16 discussions, any follow-up writings?

17 A. I don't -- I'm almost positive
18 there's nothing, there's nothing that's --
19 there's no record of it.

20 Q. Okay. Thank you.

21 THE COURT: Mr. Krebs, is that a
22 copy of the latest Code of Federal
23 Regulations on the table in front of
24 you?

1 MR. KREBS: Mine is not the
2 latest, no.

3 THE COURT: This is the latest?

4 MR. GRIMES: This is the latest
5 printing.

6 THE COURT: Let's see if we can
7 find the mixture rule in there, so
8 that we can have a definite cite. I
9 know what I think he means by the
10 mixture rule, the very famous mixture
11 rule; but let's get a citation on it,
12 since we have the book here.

13 MR. RADELL: I'll just show it
14 to Mr. Cooper first, to make sure.

15 MR. KREBS: It will probably
16 also show the effective date.

17 THE WITNESS: I don't think it's
18 going to be in there; I think it's
19 too recent. I don't think the
20 printing --

21 THE COURT: That's possible.
22 That volume, I think, is effective as
23 of July of last year.

24 MR. GRIMES: That's correct.

1 THE WITNESS: It may not be in
2 there. I doubt if it's in there.

3 MR. GRIMES: There is something
4 in here that I have thought it was
5 the mixture rule.

6 THE COURT: Yes. What I have in
7 mind, I know is in there; because I
8 have just cited a case on the mixture
9 rule last year.

10 MR. GRIMES: There may be an
11 evolving mixture rule, I would
12 assume.

13 THE COURT: Let's produce what
14 we all know is the mixture rule, and
15 see if that's what this witness has
16 in mind. If not, we can clarify it.

17 MR. RADELL: (Tendered.)

18 THE WITNESS: Where is it?

19 MR. RADELL: Here (indicating).

20 THE COURT: I hand Mr. Tarpo
21 what is the Code of Federal
22 Regulations, Part 265 --

23 MR. RADELL: I believe it is
24 261.3 -- yeah, .3, subpart 4 --

1 subparts three and four; 261.3(a)(3)
2 and (4).

3 THE WITNESS:

4 A. Okay. So it would be three and four,
5 let me see. It is a mixture of a solid waste
6 and one or more hazardous waste listed in
7 subpart (d), okay. This refers to the mixing
8 of hazardous waste with non-hazardous waste.
9 That isn't the mixture rule that I'm referring
10 to. The mixture rule that I'm referring to
11 would be the mixing of listed and unlisted
12 waste. Well, that would be the commingling
13 rule. The mixture rule -- no, this isn't the
14 rule; this isn't the area that I'm talking
15 about. The mixture rule I'm referring to is
16 the one which specifies the percent of a
17 hazardous component that will make a solid
18 waste a listed waste.

19 MR. RADELL:

20 Q. Do you know where that is codified?

21 A. Well, the problem is, you see, we
22 won't see it for another year. Let's see,
23 where I did see it?

24 Q. Is it final, do you know; or is it

1 proposed?

2 A. Yes, it's final. Why do I know it?

3 Q. Do you know the Federal Register
4 cite?

5 A. No, I don't. I'm sorry.

6 THE COURT: Of course he doesn't
7 know the Federal Register cite.

8 MR. RADELL: Well, he knew where
9 to find --

10 THE COURT: He knows there is
11 one.

12 THE WITNESS:

13 A. The reason is because I received
14 something. I believe I received something,
15 which I normally don't receive, on that
16 particular rule; but that's not the mixture
17 rule I was referring to.

18 MR. RADELL: Okay.

19 THE COURT: My gosh, there are
20 two mixture rules. Mr. Krebs, I
21 would like to have this matter
22 tracked down and provided for me.
23 The apparent amending of the rule has
24 got to have a new number; and

1 somewhere along the line, I would
2 like you to provide it.

3 MR. KREBS: We will look for it.

4 THE COURT: Be sure it is the
5 one that Mr. Tarpo is referring to.

6 THE WITNESS: You can dial the
7 RCRA hotline, if you want it.

8 MR. KREBS: We've got a phone
9 over here.

10 THE COURT: We'll get it one way
11 or another. There's no sense having
12 his testimony, unless we can put our
13 finger on that regulation.

14 If there are no further
15 questions, Mr. Tarpo, thank you very
16 much for coming and you're excused.

17 Anybody else today, Mr. Krebs?

18 MR. KREBS: That's all we have
19 today. I would like to thank
20 Mr. Tarpo for having patience with me
21 and us in scheduling him in here.
22 We've placed several calls back and
23 forth to him and trying to cut down
24 on his time, and we appreciate him

1 coming in.

2 THE COURT: Okay. Let's
3 reconvene at 9:00 o'clock tomorrow
4 morning.

5 * * * * *

6 (Proceedings Recessed at 5:50 p.m.)
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BEFORE THE ADMINISTRATOR
U.S. Environmental Protection Agency
WASHINGTON, D.C.

In the Matter of:)	
)	
Gary Development)	
Company, Incorporated)	Docket No. RCRA-V-W-86-R-45
)	
Respondent)	

J U D G E ' S C E R T I F I C A T E

I, HONORABLE J. F. GREENE, Administrative Law Judge, U.S. Environmental Protection Agency, Washington, D.C., do hereby certify that the above and foregoing is a true, correct and complete transcript of TRIAL PROCEEDINGS held on the 10th day of September, 1987, in the above-entitled cause of action, including questions, answers and statements made by the parties and Judge at said trial on the designated day, sitting in Superior Court of Lake County, Gary, Indiana.

WITNESS MY HAND this _____ day of

_____, 1987.

HONORABLE J. F. GREENE
ADMINISTRATIVE LAW JUDGE

C E R T I F I C A T E

I, VIVIAN E. JARRETT, CSR, RPR-CP, a Notary Public within said County of Lake, State of Indiana, and a competent and duly qualified court reporter, do hereby certify that the afore-mentioned cause of action came on for TRIAL before the HONORABLE J. F. GREENE, Administrative Law Judge, U. S. Environmental Protection Agency, on the 10th day of September, 1987.

I further certify that I then and there reported in machine shorthand the testimony so given at said time and place, and that the testimony was then reduced to typewriting from my original shorthand notes, and the foregoing typewritten transcript is a true and accurate record of said testimony.

I further certify that I am not related by blood or marriage to any of the parties to said suit, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said litigation.

WITNESS MY HAND and SEAL this 2nd day of November, 1987.



VIVIAN E. JARRETT, CSR, RPR-CP
COURT REPORTER & NOTARY PUBLIC

My Commission Expires 12/20/89